(29,002)

(29,047)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 452.

NEW ORLEANS LAND COMPANY, PLAINTIFF IN ERROR,

vs.

ROBERT R. BROTT, MARTHA J. BROTT, AND GEORGE O. BROTT.

No. 497.

ROBERT R. BROTT, MARTHA J. BROTT, AND GEORGE O. BROTT, PLAINTIFFS IN ERROR,

vs.

NEW ORLEANS LAND COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 10, 1922.

1–7 *Petition.*

Filed April 10th, 1908.

STATE OF LOUISIANA,
Parish of Orleans,
City of New Orleans:

Civil District Court for the Parish of Orleans.

Civil District Court, Division "D."

No. 85758.

ROBERT O. BROTT et al.

VS.

NEW ORLEANS LAND COMPANY.

To the Honorable the Civil District Court for the Parish of Orleans:

The petition of Robert R. Brott and Mrs. Martha J. Brott, widow of George F. Brott, deceased, residents of the City of Washington, District of Columbia, with respect represents:

That they are the true and lawful owners, in the proportion of one-undivided half each, of the following described property, situated in the Second District of the City of New Orleans, to wit:

All of square No. 924, bounded by Scott, Dumaine, Brooks and Murat Streets;

8 All of square No. 925, bounded by Scott, Murat, Brooks and St. Ann Streets;

All of square No. 926, bounded by Scott, St. Ann, Brooks Streets and Orleans Avenue;

All of square No. 927, bounded by Scott, Orleans Avenue, Brooks and St. Peter Streets;

All of square No. 928, bounded by Scott, St. Peter, Brooks and Anthony Streets;

All of square No. 929, bounded by Scott, Anthony, Brooks and Toulouse Streets;

All of square No. 930, bounded by Scott, Toulouse, Brooks and St. Louis Streets;

All of square No. 931, bounded by Scott, St. Louis, Brooks and Memphis Streets;

All of square No. 932, which lies east of the line dividing Section 21, Township 12 South, Range 11, east from Section 20 of the same township and range, said square being bounded by Scott, Memphis, Brooks and Conti Streets;

All of square No. 947, lying east of the line dividing Section 21,

Township 12, South of Range 11, east from Section 20 of the same township and range, and south of the line dividing Section 21 from Section 16 of the same township and range, said square being bounded by Brooks, Memphis, Harney and Conti Streets;

All of square No. 948, lying south of the line dividing Section 21, Township 12, South Range 11, east from Section 16 of the
9 same township and range, said square being bounded by Brooks, Memphis, Harney and St. Louis Streets;

All of square No. 949, lying south of the line dividing Section 21, Township 12 South of Range 11, east from Section 16 of the same township and range, said square being bounded by Brooks, St. Louis, Harney and Toulouse Streets;

All of square No. 950, lying south of the line dividing Section 21, Township 12, South of Range 11, east from Section 16 of the same township and range, said square being bounded by Brooks, Toulouse, Harney and Anthony Streets;

All of square No. 951, bounded by Brooks, Anthony, Harney and St. Peter Streets;

All of square No. 952, bounded by Brooks, St. Peter, Harney Streets and Orleans Avenue;

All of square No. 953, bounded by Brooks, Orleans Avenue, Harney and St. Ann Streets;

All of square No. 954, bounded by Brooks, St. Ann, Harney and Murat Streets;

All of square No. 955, bounded by Brooks, Murat, Harney and Dumaine Streets;

All of square No. 956, bounded by Brooks, Dumaine, Harney and Napoleon Streets;

All of square No. 957, bounded by Brooks, Napoleon, Harney and St. Philip Streets;

10 All of square No. 958, bounded by Brooks, St. Philip, Harney and Solomon Streets;

All of square No. 959, bounded by Brooks, Solomon, Harney and Ursuline Streets;

All of square No. 960, bounded by Brooks, Ursulines, Harney and Hospital Streets;

All of square No. 961, bounded by Brooks, Hospital, Harney and Barracks Streets;

All of square No. 962, bounded by Brooks, Barracks, Harney and Esplanade Streets;

All of square No. 963, bounded by Brooks, Esplanade, Harney Streets and Bayou St. John;

All of square No. 966, bounded by Harney Street, Bayou St. John, Gaines and Esplanade Streets;

All of square No. 967, bounded by Harney, Esplanade, Gaines and Barracks streets;

All of square No. 968, bounded by Harney, Barracks, Gaines and Hospital Streets;

All of square No. 969, bounded by Harney, Hospital, Gaines and Ursulines Streets;

All of square No. 970, bounded by Harney, Ursulines, Gaines and Solomon Streets;

All of square No. 971, lying south of the line which divides Section 21, Township 12, South of Range 11, east from Section
11 16 of the same township and range, said square being bounded by Harney, Solomon, Gaines and St. Philip Streets;

All of square No. 972, lying south of the line which divides Section 21, Township 12, South of Range 11, east from Section 16 of the same township and range, said square being bounded by Harney, St. Philip, Gaines and Napoleon Streets;

All of square No. 973, lying south of the line which divides Section 21, Township 12, South Range 11, east from Section 16 of the same township and range, said square being bounded by Harney, Napoleon, Gaines and Dumaine Streets;

All of square No. 974, lying south of the line which divides Section 21, Township 12, South Range 11, east from Section 16 of the same township and range, said square being bounded by Harney, Dumaine, Gaines and Murat Streets;

All of square No. 975, lying south of the line which divides Section 21, Township 12, South of Range 11, east from Section 16 of the same township and range, said square being bounded by Harney, Murat, Gaines and St. Ann Streets;

All of square No. 976, lying south of the line which divides Section 21, Township 12, South Range 11, east from Section 16 of the same township and range, said square bounded by Harney, St. Ann, Gaines Streets and Orleans Avenue.

12 All of square No. 1010, lying east of the line which divides Section 15, Township 12, South Range 11, east from Section 16 of the same township and range, said square being bounded by Gaines, Hospital, Ursulines Streets and Polk Avenue;

All of square No. 1011, bounded by Gaines, Hospital, Barracks Streets and Polk Avenue;

All of square No. 1012, bounded by Gaines, Barracks, Esplanade Streets and Polk Avenue.

All of square No. 1013, bounded by Gaines, Esplanade Streets, Polk Avenue and Bayou St. John;

All of square No. 1016, bounded by Polk Avenue, Bayou St. John and Ringold and Esplanade Streets;

All of square No. 1017, bounded by Polk Avenue, Esplanade, Ringold and Barracks Streets;

All of square No. 1018, bounded by Polk Avenue, Barracks, Ringold and Hospital Streets;

All of square No. 1019, lying east of the line which divides Section 15, Township 12, South Range 11, east from Section 16 of the same township and range, said square being bounded by Polk Avenue, Hospital, Ringold and Ursuline Streets;

All of square No. 1062, lying east of the line which divides Section 15, Township 12, South Range 11, east from Section 16 of the same township and range, said square being bounded by Ringold, Ursuline, French and Hospital Streets;

13 All of square No. 1063, bounded by Ringold, Hospital, French and Barracks Streets;

All of square No. 1064, bounded by Ringold, Barracks, French and Esplanade Streets;

All of square No. 1065, bounded by Ringold, Esplanade and French Streets and Bayou St. John;

All of Square No. 1068, bounded by French, Bayou St. John and Fremont and Esplanade Streets;

All of square No. 1069, bounded by French, Esplanade, Fremont and Barracks Streets;

All of Square No. 1070, bounded by French, Barracks, Fremont and Hospital Streets;

All of square No. 1071, which lies east of the line which divides Section 15, Township 12, South Range 11, east from Section 16 of the same township and range, said square being bounded by French, Hospital, Fremont and Ursulines Streets;

All of square No. 1112, bounded by Fremont, Ursulines, Bragg and Hospital Streets;

All of square No. 1113, bounded by Fremont, Hospital, Bragg and Barracks Streets;

All of square No. 1114, bounded by Fremont, Barracks, Bragg and Esplanade Streets;

All of square No. 1115, bounded by Fremont, Esplanade and Bragg Streets and Bayou St. John.

14 All in accordance and conformity with a "duly certified copy of" an original map drawn by W. H. Bell, civil engineer, dated October 20, 1880, of all property comprised in Sections 15, 21 and 22 of Township 12, South Range 11 east, and situated in the corporate limits of the City of New Orleans, known as Park Place, compiled from the United States surveys approved June 26, 1872, and from maps of squares and streets on file in the City Surveyor's office of New Orleans, which certified copy of said map is attached to an act of deposit executed before A. Abat, late notary public of the City of New Orleans, of date October 26, 1880;

Petitioners aver that they acquired the said property in the proportion aforesaid, as the sole forced heir and widow in community, respectively of George F. Brott, who died intestate in the City of Washington, D. C., on the 13th day March, 1902; that the said George F. Brott had acquired said property while a resident of the State of Louisiana and during the existence of the community of acquets and gains between him and your petitioner, Mrs. Martha J. Brott, in the following manner:

That he acquired lots Nos. 1, 2, 3 and 4 all of Section 21, Township 12, South of Range 11, east, in the Southeastern District of Louisiana, east of the river, containing 97.48 acres, from the State of Louisiana, by Patent No. 1871, dated April 27, 1874, issued under certificate No. 1237, N. S. D., and recorded in State Land Office in Book of Patents, Vol. 18, p. 1.

That said George F. Brott acquired Fractional Section 15, and Fractional Section 22, Township 12, South of Range 11,

15 east, in the Southeastern District of Louisiana, east of the river, containing 101.82 acres from A. W. Smyth, by act under private signature, duly acknowledged of date August 21, 1873, and recorded in the Conveyance Office of the Parish of Orleans, in C. O. B., 112, fo. 652, said act under private signature being annexed to act of deposit passed before A. Abat, late notary public, of the City of New Orleans, on the 24th day of July, 1880, that the said A. W. Smyth acquired said Fractional Sections 15 and 22 from the State of Louisiana by Patent No. 1889 of date June 3, 1874, issued under certificate No. 1230, N. S. D., dated July 1, 1873, and recorded in State Land Office in Book of Patents Vol. 18, p. 10.

That by act under private signature, duly acknowledged of date May 15, 1874, the said George F. Brott sold an undivided half interest in all of the above described property to Jas. G. Richardson, recorded in the Conveyance Office of the Parish of Orleans, in book 105, fo. 339;

That by act of retrocession of sale, under private, signature, duly acknowledged, dated June 15, 1875, the said Jas. G. Richardson retroceded and reconveyed to said George F. Brott the said undivided one-half interest in said property, recorded in Conveyance Office of the Parish of Orleans, in book 112, fo. 652;

Petitioners further aver that the aforesaid city squares are located in Fractional Sections 15, 21 and 22, Township 12, South Range 11, east, as per aforesaid plan by W. H. Bell, civil engineer, of date October 20, 1880.

16 Petitioners further aver that the New Orleans Land Company, a Louisiana corporation domiciled in the City of New Orleans, is without color or right claiming the ownership and is unlawfully in possession of the said above described property, and that the value of said property is more than the sum of twenty-five hundred dollars;

Wherefore, Petitioners pray that the said New Orleans Land Company be cited to appear and answer this petition and that after due proceedings had, there be judgment in favor of petitioners and against the said New Orleans Land Co., decreeing petitioners to be the true and lawful owners, each of an undivided one-half of the above described property, and as such sending them into possession thereof, and for all costs and for general and equitable relief.

(Signed) FOSTER, MILLING & GODCHAUX,
ALEXIS BRIAN,
Attorneys for Petitioners.

Exception of Prescription.

Filed May 8, 1908.

Into Court comes the New Orleans Land Company, through its President, A. C. Wuerpel, who pleads the prescription of three, five, ten and thirty years to plaintiffs' suit;

Exceptor avers that the property sued for was purchased by Exceptor June 18, 1895, by act before T. Buisson, recorded in the Conveyance Office, Book 156, fo. 468; that exceptor pur-
17 chased from George Friedricks a part of said property by act before J. C. Davey, on the 15th of January, 1907, duly registered in the Conveyance Office Book 211, fo. 459;

That exceptor purchased squares 913 and 914 from J. B. Maylie, by act before W. Morgan Gurley, duly registered in Conveyance Office, Book 193, fo. 271;

That exceptor purchased other portions from J. B. Maylie by act before J. C. Davey, April 4, 1903, in Conveyance Office, Book 189, fo. 273; and July 15, 1904, in Conveyance Office, Book 197, fo. 665, also same date in Conveyance Office, Book 196, fo. 671;

That exceptor purchased another portion from C. A. Gaudet, by act before James Fahey, notary public, on the 16th day of February, 1893, in Conveyance Office, Book 148, fo. 89;

All of said acts are translative of property and your exceptor went immediately into open, public, corporeal possession of said property and has been in such possession for more than ten years.

That your exceptor paid a valuable consideration for said property with warranty deed and subrogation and substitution to all the rights of any and all preceding vendors;

That J. B. Maylie and George G. Friedricks, two exceptors' vendors, had acquired part of said property at tax sale and had re-
mained in actual corporeal possession of same for more than
18 three years, and had, therefore, an indefeasible title to same;

That all the other vendors of said property had titles to the same property running back to the French Grant, and their titles had been recognized as valid by the government of the United States; and that they had acquired said property for more than thirty years, long antedating any title or pretense of title by the State of Louisiana;

That your exceptor, therefore, pleads the prescription of three years, of five years, of ten years and thirty years acquirenda causa;

Wherefore, exceptor prays that the prescription here pleaded be maintained and that judgment be rendered in favor of exceptor and that plaintiff's suit be dismissed with costs and for general relief, etc.

(Signed) CHAS. LOUQUE,
Attorney.

Answer.

Filed May 6, 1910.

Into Court comes the New Orleans Land Co. who, reserving to themselves the benefit of the exception of prescription herein filed of three, five, ten, thirty years and reiterating the same, for further answer to the petition herein filed, say that they deny all and singular the allegations of the petition;

19 Further answering, the respondents aver that a part of the property claimed by plaintiff was acquired by your respond-

ent from Dr. C. A. Gaudet, by act before James Fahey, notary public, on the 16th day of February, 1893, registered Conveyance Office, Book 148, fo. 89;

That Dr. Gaudet acquired the same from J. W. Gurley, Receiver of the Drainage, in the case of J. W. Peake v. City of New Orleans, No. 12,008 of the Circuit Court of the United States for the Eastern District of Louisiana, made at public auction, on the 27th day of February, 1892, registered Conveyance Office, Book 147, fo. 535, to carry out the adjudication made by the master some time previously a sale was executed before James Fahey, notary public, and was duly registered;

Your respondent avers that said portions of ground had been donated by Congress to the State of Louisiana as swamp and overflowed lands, and in order to carry out the object of Congress the State of Louisiana created a Drainage District and appointed Drainage Commissioners to carry out the purposes and object of said acts of 1855, No. 247, page 306 and 1858, No. 165;

That the Drainage Commissioners under authority of Act of 1858 levied an assessment on said land, issued a writ of fieri facias, and to the Milne Asylum for Destitute Girls sold the same to the Drainage Board to avoid a sheriff's sale in 1863, by act before Hugh Madden, notary public, September 10, 1863, which deed is registered in the Conveyance Office, Book 85, fo. 649;

20 That another portion was acquired by the Board of Drainage Commissioners at sheriff's sale against the heirs of de Morant, No. 17,028 of the docket of the late Third District Court, and duly registered in the Conveyance Office, Book 85, fo. 641;

That title remained in said Board of Drainage Commissioners from 1863 to the year 1871, when the act of the Legislature, No. 30, the said Board of Drainage Commissioners to turn over said land to the Board of Administrators of the City of New Orleans, to be held in trust by the said City for the purpose of paying the drainage work ordered under said act and eventually for the benefit of the City of New Orleans;

That the patent under which the plaintiff claims having been issued by the Register of the Land Office, at a date subsequent to said act of 1871, could not in any way affect the trust in favor of the holders of the Drainage Warrants, nor the transfer made to the City of New Orleans by the State under and by virtue of the Act of 1871, No. 30, that the title of the State was thus completely divested;

That as regards another portion acquired by the New Orleans Land Company, from Bernard Maylie, who acquired same at tax sale, the prescription of three years gives to your respondent a perfect title to said land and that said title has been ratified by the previous owners who held the same under valid title by mesne conveyances up and previous to the purchase of the territory of Louisiana by the United States Government and said titles are protected by the

21 treaty of 1803 entered into between the United States Government and France and are especially excepted from the donation made of the swamp and overflowed lands to the State of Louisiana by the Acts of Congress of 1849 and 1850, and your re-

spondents especially plead the protection of said treaty of 1803 and the two Acts of Congress as a protection of the title now set up;

Further answering, respondents aver that only such lands as are designated by the Secretary of the Treasury are transferred under Acts of Congress of 1849 and 1850; that although said Acts make a donation in presenti yet the donation does not become effective until the selections have been made;

That no selection has ever been made by the Secretary of the Treasury of the lands claimed by plaintiff, and he alone was authorized to make the selections;

That a portion of said land was purchased by your respondents from Geo. G. Friedricks, by act before J. C. Davey, notary public, January 15, 1907, registered Conveyance Office, Book 211, fo. 459, and the title of your respondents has been recognized by the Supreme Court as valid;

That said title was obtained by Geo. G. Friedricks from the State Auditor under Acts of 1888 and 1896, and the State acquired for unpaid taxes and duly registered in the Conveyance Office;

22 That more than three years have elapsed since the State's purchase and the same is a complete and perfect title;

That another portion was purchased by respondents by deed of exchange with the N. O. Western R. R. Co., by act before T. Buisson, notary public, June 18, 1895, and was duly registered in the Conveyance Office, Book 221, fo. 459; and the title of the transferees runs back previous to 1803, and is protected by the treaty between the United States and France under Acts of Congress of 1849 and 1850 and has never been selected by the Secretary of the Treasury.

That your respondents have been in actual corporeal possession of said land, publicly, continuously, uninterruptedly, peaceably and unequivocally by title translative of property during ten years;

That respondents have always paid their taxes punctually and plaintiff has never paid one cent;

Wherefore, respondents pray that judgment be rendered in their favor, recognizing them as owners of the property sued herein and they pray that plaintiff's suit be dismissed with costs and respondents pray for general relief, etc.

(Signed) CHAS. LOUQUE,
Attorney.

23 *Petition of Intervention and Order.*

Filed August 17, 1915.

To the Hon. The Civil District Court for the Parish of Orleans:

The petition of Intervention of George O. Brott, a resident of Hartford, Conn., with respect shows, that:

Petitioner is the owner of an undivided one-fourth interest in the following described property situated in the Second District of the City of New Orleans, State of Louisiana, to-wit:

Fractional Section 15, Fractional Section 22 and lots 1, 2, 3, and 4 of Section 21 in Township 12 South, Range 11 East, in the South-

eastern Land District of Louisiana, East of the Mississippi river, according to the official plat of survey of the said land in the State and Federal Land Offices.

Petitioner is the owner of said land by inheritance from his deceased father, George F. Brott, who died intestate in Washington, D. C., the 19th day of March, 1902; that petitioner is the legitimate son of George F. Brott, deceased; that George F. Brott acquired said property when a resident of Louisiana and during the community of acquets and gains between his wife, Mrs. Martha J. Brott and himself, in the following manner:

Lots one, two, three and four, comprising the whole of Section 21, Township 12 South, Range 11 East, Southeastern Land Dis-
24 trict of Louisiana East of the Mississippi river, containing 97.82 acres, was purchased from the State of Louisiana, as appears by patent 1871, dated April 27, 1874, issued under certificate No. 1237 N. S. D. and recorded in the State Land Office in Book of Patents, Vol. 18, page 1.

Fractional Section 15 and Fractional Section 22, Township 12, Range 11 East, in the Southeastern Land District of Louisiana, East of the Mississippi river, containing 101.82 acres, was purchased by said George F. Brott, deceased, from A. W. Smyth by act under private signature, duly acknowledged and of date August 21, 1873, recorded in Conveyance Office of the Parish of Orleans, C. O. Book 112, fo. 652; said act under private signature being annexed to an Act of Deposit passed before A. Abat, late notary public, for the City of New Orleans, under date of July 24, 1880; the said A. W. Smyth having purchased said fractional sections 15 and 22 from the State of Louisiana, patent No. 1889 of date June 3, 1874; issued under certificate No. 1237 N. S. D. dated July 1, 1873, and recorded in State Land Office, Book of Patent, Vol. 18, page 10.

By act under private signature duly acknowledged and dated May 15, 1874, said George F. Brott, deceased, sold an undivided one-half interest in all the above described property to James G. Richardson, recorded in Conveyance Office, Book 105, fo. 339; and by act
25 of retrocession under private signature dated June 15, 1875, the said James G. Richardson retroceeded to said Geo. F. Brott, deceased, the said undivided one-half interest in said property. Recorded C. O. B. 112, fo. 652.

That said hereinabove described property comprises all of the property in dispute herein and other property, and is claimed adversely to petitioner by both plaintiffs and defendant, and that petitioner is entitled to judgment recognizing him as the sole owner in perfect ownership of said hereinabove described property, contradictorily with both the plaintiffs and defendant.

The value of said property exceeds $2,000.00.

Wherefore, petitioner prays that he may be granted leave to file this petition of intervention; that plaintiffs and defendant may be cited to answer this petition, and after due legal proceedings had, that there be judgment in favor of petitioner over and against the plaintiffs, Robert R. Brott and Mrs. Martha J. Brott, widow of George F. Brott, deceased, both residents of Seattle, Washington, and the New

Orleans Land Company, recognizing petitioner as the sole owner of an undivided one-fourth interest in said land, and as such entitled to the possession thereof. And for all cost and general and equitable relief, etc.

(Signed) WM. WINANS WALL,
Attorney.

26 *Order.*

Let this Petition of Intervention be filed according to law.
New Orleans, August 17, 1915.

(Signed) PORTER PARKER,
Judge.

Service accepted and citation waived. New Orleans, August 17, 1915

(Signed) CHAS. SCHNEIDAU,
Attorney for Plaintiffs.

(Signed) CHAS. LOUQUE,
Attorney for New Orleans Land Co.

Answer to Intervention of New Orleans Land Company.

Filed November 9, 1915.

Into Court comes the New Orleans Land Company, who for answer to the petition of intervention filed herein by George O. Brott, says that they deny all and singular all allegations contained in intervenor's petition;

Respondents plead the prescription of three years to the property acquired by them from Geo. G. Friedricks and Bernard Maylie; that Geo. G. Friedricks acquired by Auditor's title and his title was maintained by the Supreme Court in the case of Shelby v. Geo. G. Friedricks, reported in the 117th La. Report, page 679. That
27 Bernard Maylie acquired at a tax sale made for State Taxes, and more than three years have elapsed since said acquisition;

That more than ten years have elapsed since said property was acquired from Dr. C. A. Gaudet; that your respondents, after their purchase, went into corporeal possession of said property; that the fact of possession was duly recognized by a judgment rendered by the then Circuit Court of the United States, which was affirmed on appeal to the Circuit Court of Appeals; that the property fronts on Bayou St. John and runs to Milne Street and adjoins the Canal Bank Tract, which your respondents owned and of which the Circuit Court of the United States declared by solemn judgment to belong to your respondents; that due force and effect should be given to the judgment of said Court as being an authority exercised under the Constitution of the United States; that said judgment having recognized your respondents as owners and in possession of a part of the property purchased by them, their possession under the law is to extend

to the whole of the tract; that defendant's possession commences in 1893;

That adding the possession of respondents, vendors' said possession exceeds thirty years, and your respondents now plead the prescription of ten and thirty years acquirendi causa.

Further answering, respondents aver that a portion of the property claimed includes the Beugnot and Castera tract; that this tract of land measures 4 arpents front on Bayou St. John and extends to 40 arpents in depth, and was a concession of land made by
28 the foreign government, which was duly approved by the United States government; that neither the United States nor the State of Louisiana have or ever had any claim to said property, and the State of Louisiana never had the right or authority to issue a patent for said land to any individual.

That the Supreme Court of this State has recognized the validity of said title and has fixed the locus.

That the State Auditor made a sale of said property, which was acquired by the State for taxes, to George G. Friedrichs, and George G. Friedrichs sold to the New Orleans Land Co.; that squares 931 and 932 were sold to the New Orleans Land Co. by the heirs of Castera by sale executed before John Wagner, Notary Public, on the 1st of July, 1912:

Six lots square 932—6, 7, 8, 9, 10 and 11, act J. F. Meunier, Feb. 10. 1911, front on Scott and Memphis; eleven lots square 932, corner Scott and Memphis, St. Louis.

Further answering, your respondents aver that next to the Buegnot and Castera tract and adjoining thereto, on the north side, is a tract of land three acres front on Bayou St. John by 40 arpents, which is a concession from the French Government, and which was duly confirmed by the Government of the United States to Francois Alpuente.

That the survey of Sulakosky, which locates the Alpuente tract on the Taylor Avenue Canal, has been declared by the Supreme Court of this State to be erroneous and said tract of land was located to
29 the north of the Allard tract and adjoining thereto, said decision being rendered in the case of the Heirs of Castera v. N. O. Land Co., and is reported in the 125th La. Report, page 877. That your respondent acquired said tract from the N. O. & Western R. R.

That the De Morant tract, which measures 575 feet front on Bayou St. John by 45 arpents in depth, running to Milne Street, adjoins the Alpuente tract to the north, and has been acquired by respondent from Dr. C. A. Gaudet; that Dr. C. A. Gaudet acquired said property at public sale made by J. W. Gurley, receiver appointed by the Circuit Court to liquidate the drainage fund; that the receiver acquired said property from the City of New Orleans by a regular transfer; that the City of New Orleans acquired said property from the State of Louisiana under and by the terms of Act No. 30 of 1871, entitled, An Act to Create and Incorporate the New Orleans, Mississippi & Mexican Gulf Ship Canal Co., said act directing the City of New Orleans to proceed with the drainage of New Orleans and directing said city to hold said property in trust for the payment of drainage,

and eventually, if not needed for drainage, for the benefit of the City of New Orleans.

That the city acquired said property from the Board of Drainage Commissioners created by the Acts of 1858, No. —, and 1859, No. —.

That said Board of Drainage Commissioners were authorized to subdivide said tract of land and levy a drainage tax thereon to pay for the drainage thereof and to purchase the same; that said
30 Board of Drainage Commissioners purchased said property in 1863.

That the trust created by the Act of the Legislature was placed in liquidation by the appointment of a receiver; that he obtained an order for the sale of said property from the Circuit Court of the United States, and Dr. C. A. Gaudet purchased said property and sold the same to this respondent.

That the title thus acquired was acquired in good faith for a valuable consideration and under the exercise of an authority given by the laws of the United States; that these proceedings are numbered No. 12008 of the Circuit Court of the United States and cannot be collaterally attacked; that the patent held by the plaintiff and intervenor was issued in 1874 and subsequent years, and were issued without authority, inasmuch as the State of Louisiana had by an Act of the Legislature disposed of said property for the benefit of the City of New Orleans, and had created a trust for the payment of drainage; that the plaintiffs and intervenors have never paid a cent, either for taxes, drainage or improvement of said property, and have allowed their patent to lay dormant for the period of forty years or more, and cannot now be heard to urge its validity as against the proceedings above mentioned and the rights acquired by these respondents.

That north of the De Morant tract above mentioned is the portion of ground acquired by the New Orleans Land Co. from Bernard Maylie, who acquired at a tax sale.

31 That said portion of ground and the tract adjoining to the north form a part of the property lately owned by the Milne Asylum for Destitute Orphan Girls.

That said asylum was the legatee of Alexander Milne and acquired said portion of ground by virtue of a partition between the other asylums, also legatees of Alexander Milne.

That Alexander Milne acquired said property from various parties, and the original owner was the grantee of the French Government by the name of Carlos Terascon, whose grant was made in 1766; that Carlos Terascon and various vendees transferred said property to Alexander Milne; that Dr. Gaudet and his vendee, the New Orleans Land Co., have now owned said property for a period of one hundred and forty-nine (149) years, and their title and possession should be quieted; that the State of Louisiana, through its Board of Drainage Commissioners, recognized the title of the Milne Asylum for Destitute Orphan Girls by purchase of a part of their property by a conventional sale executed before Hugh Madden in 1863, and they subsequently transferred same to the City of New Orleans under the Act of 1871, No. 31. That through the proceed-

ings above-mentioned said property was sold to enforce the trust created by said Act of 1871, and your respondent purchased at said sale through their vendor, Dr. C. A. Gaudet.

That eight (8) arpents front on Bayou St. John were thus held by complete title when the Government of the United States acquired from France; that under the treaty between France and the
32 United States Government, the life, liberty and property of the inhabitants of the ceded territory were to be protected and held sacred.

That the property thus acquired by concession from the French Government and held under treaty cannot be divested by the State of Louisiana giving a patent to land which was not her property.

That the grant of the swamp land made by the Government of the United States to the State of Louisiana in 1849 did not include property owned or claimed by Individuals.

That the State of Louisiana, having through her Board of Drainage Commissioners recognized the title of the Milne Asylum for Destitute Orphan Girls, could not issue a patent and sell the land of said asylum without their consent; that any such patent so issued is null and void and can give no right to the patentee.

That your respondent has been in actual possession of said property and has expended large sums of money in improving the same; has paid city and State taxes assessed on said property, and the plaintiff has never made any effort to make his title known.

Wherefore, respondent prays that this suit and the intervention herein filed be dismissed at plaintiff's costs and for judgment in their favor, reserving to these defendants the right to have their claim for improvements and taxes paid liquidated before giving up possession, in case the judgment should be rendered in favor of plaintiff
33 on the question of title, and respondents pray for general relief, etc.

(Signed) CHAS. LOUQUE,
DINKELSPIEL, HART & DAVEY,
Attorneys.

Answer to Petition of Intervention of Geo. O. Brott.

Filed Nov. 9, 1915.

Now into Court, through their undersigned counsel, come Mrs. Martha J. Brott, widow of Geo. F. Brott, and Robert R. Brott, and for answer to the petition of intervention filed by Geo. O. Brott herein, answer and aver as follows:

Respondents admit the averments and allegations of said petition of intervention contained and shown in Paragraphs One, Two, Three, Four, Five, Six, Seven, Eight of said petition of intervention, except that respondents deny that said George O. Brott is the owner of any portion of said property in controversy beyond an undivided fourth thereof, subject to the usufruct of said Mrs. Martha J. Brott, widow in community.

Wherefore, respondents pray that George O. Brott be recognized as the owner of an undivided fourth of the property described in the petition of intervention, in naked ownership, and for general relief.

And respondents submit the said petition of intervention,
34 this answer thereto, and the subject matter thereof to this Honorable Court.

(Signed) ALEXIS BRIAN,
CHAS. SCHNEIDAU,
Attorneys for Plaintiffs.

Rule for New Trial.

Filed Nov. 15, 1917.

On motion of Chas. Louque and W. O. Hart, attorneys for the New Orleans Land Co., and on suggesting to the Court that the judgment herein rendered is contrary to law and the evidence.

1. Because Section 115 incu*l*des part of the property of Alpuente, which has been duly confirmed by the United States Government, which could not be included in the Swamp Land Acts of 1849 and 1850 of Congress, and the property of the Milne Asylums for Destitute Orphan Girls, which form part of the grant made by Governor Aubry to Carlos Terascon, a complete grant which the treaty between the United States Government and the French Government in 1803, protected to the owners, a part of which was sold for taxes and acquired by your movers, which title was recognized as valid by the Supreme Court of Louisiana, with the streets dedicated and recognized by the plaintiff's ancestors;

That Section 22 includes the Alpuente tract and the De Morant tract, acquired by the New Orleans Land Co., at a sale made
35 under orders of the Circuit Court for the Eastern District of Louisiana, as well as the tract of the Milne Asylum for Destitute Orphan Girls mentioned in Section 15 above recited; under No. 12,008 of the docket of said Court, in the case of Peake v. City of New Orleans in equity for the purpose of foreclosing the trust created under Act No. 30 of 1871, which expressly transferred to the City of New Orleans all of the above described property to be sold, to pay for the drainage work ordered by said act; that the question of trust was passed upon and decided by the Circuit Court and effectually protects movers in their title;

That this was the exercise of an authority exercised under the United States which cannot be disregarded and to which full faith and credit must be given by this Court;

That Section 21 includes part of the Beugnot and Castera tracts for which your Respondents hold a valid tax title, so recognized by the Supreme Court of this State;

That the dedication of streets in said tract were formally recognized by the plaintiff's ancestor in the sales by which he acquired;

It is ordered by the Court that plaintiffs and intervenor do show cause on Friday, the 16th day of November, 1917, at 11 o'clock A. M., why a new trial should not be granted herein.

(Signed) O. K. P. P., Nov. 19, 1917; new trial refused.

36 *Patent No. 1889, Issued by the State of Louisiana to Andrew W. Smith, Marked "Brott–8."*

Offered in Evidence by Counsel for Plaintiff.

Filed Jan. 11, 1918.

State of Louisiana.

Patent No. 1889.

To all to whom these presents shall come, Greeting:

Whereas, Andrew W. Smyth, of the Parish of Orleans, in the State of Louisiana, purchased, per Certificate No. 1230, N. S. D., July 1st, 1873. All fractional Secs. (15 and 22) fifteen and twenty-two in T. 12, S. R. 11 E. in S. E. District East of Mississippi river, containing One hundred and one and 82/100 acres (101.82/100) issued in lieu of Patent No. 1872, according to the official plat of the survey of said lands in State Land Office.

Now know ye, That the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided has given, granted and sold and by these presents does give, grant and sell unto the said Andrew W. Smyth and to his heirs, the above-described land, to have and to hold the same, together with all the rights, titles and privileges thereunto belonging, unto the said Andrew W. Smyth and to his heirs and assigns forever.

In testimony whereof, I, William Pitt Kellogg, Governor
37 of the State of Louisiana, have caused these letters to be made Patent, and the Seal of the State Land Office to be hereunto affixed.

Given under my hand, at the City of New Orleans, on the third day of June, in the year of our Lord One Thousand Eight Hundred and Seventy-four, and of the Independence of the United States the Ninety-eighth.

(Signed) WM. P. KELLOGG.

Record of Patent. By the Governor.
Vol. 18, page 10.

(Signed) JOHN RAY,
Register State Land Office.

State Land Office.

Baton Rouge, La., March 4th, 1907.

I hereby certify that this copy is a true and literal exemplification of the record to which it purports to relate, now on file in this office.

(Signed) A. W. CRANDELL,
[SEAL.] *Register.*

Judgment.

In this cause submitted to the Court for adjudication, the law and the evidence being in favor thereof, and for the reasons orally assigned:

It is ordered, adjudged and decreed, that there be judgment herein in favor of the plaintiffs (Robert R. Brott and Mrs. Martha
38 J. Brott) over and against defendant (New Orleans Land Company) and intervenor (George O. Brott), recognizing plaintiffs as the sole owners, in perfect ownership, of an undivided three-fourths interest in all of the property described in the petition, lying within the boundaries of Fractional Section 15, Fractional Section 22, Lots 1, 2, 3, and 4 of Section 21, Township 12, South of Range 11 East, Southeastern Land District of Louisiana, East of the Mississippi river, according to the official plat of survey of said land in the State and Federal Land Offices.

It is further ordered, adjudged and decreed, that there be judgment herein in favor of intervenor, over and against plaintiffs and defendant, recognizing intervenor as the owner, in perfect ownership, of an undivided one-fourth interest in Fractional Section 15, Fractional Section 22 and Lots 1, 2, 3 and 4 of Section 21, Township 12, South of Range 11 East, Southeastern Land District of Louisiana, East of the Mississippi River, according to the official plat of survey of said land in the State and Federal Land Offices.

It is further ordered, adjudged and decreed, that the defendant pay all costs.

Judgment rendered and read in open Court, November 6, 1917.

Judgment signed in open Court, November 19, 1917.

(Signed) PORTER PARKER,
Judge.

39 STATE OF LOUISIANA,
Parish of Orleans:

Know all men, by these presents, That I, James G. Richardson, a resident of said Parish and State, do hereby grant, bargain, sell and deliver to George F. Brott, also of the same (place) residence, the one undivided half of the following described lands, to-wit:

Lots One (1) and Two (2) of Section Fifteen, Fractional Section twenty-two, and Lots One, Two, Three and Four of Section Twenty-one (21) in Township Twelve (12) South of Range Eleven (11) East, in the Southeastern Land District east of the Mississippi river, containing in the aggregate One Hundred and Ninety-nine 30/100 acres, and situated in the Parish of Orleans, in said State.

To have and to hold said land to and in favor of said George F. Brott, his heirs and assigns forever, the vendor herein only warranting title as against himself, his heirs, but not against the claim of any other person as claimant.

The consideration for which this sale is made is the sum of Five Thousand Dollars, cash in hand paid, the receipt whereof is hereby acknowledged.

In testimony whereof both parties hereto have signed this deed and contract in presence of J. W. Parker and C. A. Carriere, witnesses also of the same residence, who have also signed this deed as witnesses, on this 15th day of June, A. D. 1875.

(Signed) J. G. RICHARDSON.
(Signed) GEO. F. BROTT.

Attest:
J. W. PARKER.
C. A. CARRIERE.

STATE OF LOUISIANA,
Parish of Orleans:

I, C. A. Carriere, do solemnly swear that I saw the parties to the foregoing act sign the same and that I signed the same with the other subscribing witnesses at the same time and on the same day it bears date.

(Signed) C. A. CARRIERE.

Sworn to and subscribed before me this 16th day of June, 1875.

(Signed) WM. C. HOLMES,
[SEAL.] *Second Justice of the Peace, Parish of Orleans, La.*

STATE OF LOUISIANA,
Parish of Orleans:

I, the undersigned, Peter Stifft, Custodian of Notarial Records in and for the Parish of Orleans and State of Louisiana, do hereby certify that the above and foregoing is a true and correct copy of the Original, on file and of record in my office.

Witness my hand and official seal this 22d day of April, 1908.

(Signed) PETER STIFFT,
[SEAL.] *Custodian of Notarial Records.*

STATE OF LOUISIANA:

To all to whom these presents shall come, Greeting:

Whereas, George F. Brott, of the Parish of Orleans, in the State of Louisiana, purchased per Certificate No. 1237 N. S. D., 11th July, 1873, Lots Nos. one, two, three and four, of Section No. 21, in Township 12 South—Range 11 East, in the Southeastern Land District east of the Mississippi river; containing ninety-seven and forty-eight one hundredths (97.48/100) acres.

According to the official plat of survey of said lands in the State Land Office.

Now Know Ye: That the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold and, by these presents does give, grant and sell unto the said Geo. F. Brott and to his heirs, the above-described land. To have and to hold the same, together with all the rights, titles and privileges thereunto

belonging unto the said Geo. F. Brott and to his heirs and assigns forever."

In witness whereof, I, William Pitt Kellogg, Governor of the State of Louisiana, have caused these transfers to be made Patent and the Seal of the State of Louisiana to be hereunto affixed.

Given under my hand, at the City of New Orleans, on the 27th day of April, in the year of our Lord One Thousand Eight Hundred and Seventy-four, and of the Independence of the United States, the Ninety-eighth.

WM. P. KELLOGG.

By the Governor,
(Signed) JOHN RAY,
Register.

STATE OF LOUISIANA,
Parish of Orleans:

I, the undersigned, Peter Stifft, Custodian of Notarial Records, do hereby certify that the above and foregoing is a true and
43 correct copy of the original, on file and of record in my office.
Witness my hand and official seal, this 22d day of April, 1908.

(Signed) PETER STIFFT,
[SEAL.] *Custodian of Notarial Records.*

STATE OF LOUISIANA,
Parish of Orleans:

Know all men by these presents, That, I, Andrew W. Smyth, resident of said Parish and State, do hereby sell, transfer and deliver to George F. Brott, also of the same residence, the following described land situated in the Parish of Orleans, and being all of Fractional Section Fifteen (15) and Fractional Section Twenty-two (22) in Township Twelve (12) South, Range Eleven (11) East, South-eastern Land District of Louisiana, containing in all One Hundred and One acres and Eighty-two one hundred- (101.82) acres.

This sale is made for the consideration of Twenty-five 46/100 Dollars cash in hand paid, the receipt whereof is hereby acknowledged.

To have and to hold said land in favor of said Brott, his heirs and assigns.

It being well understood that this vendor does not warrant the title to said land except against himself, his heirs and assigns, but
44 against no other person or persons whomsoever; hereby only transferring such title as he has acquired by the entry of said land from the State of Louisiana.

In testimony whereof we have hereto signed our names in presence of the undersigned witnesses on this 10th day of July, A. D., 1873.

(Signed) J. G. RICHARDSON.
A. W. SMYTH.
J. B. BRES, JR.
GEO. F. BROTT.

STATE OF LOUISIANA,
Parish of Orleans:

I do solemnly swear that I signed the foregoing deed at the time it bears date and that I saw the other subscribing witness and the parties thereto sign the same at the same time.

(Signed) J. G. RICHARDSON.

Signed and sworn to before me on this 21st day of August A. D. 1873.

(Signed) J. BENDERNAGEL,
[SEAL.] *Notary Public.*

STATE OF LOUISIANA,
Parish of Orleans:

I, the undersigned, Peter Stifft, Custodian of Notarial Records in and for the Parish of Orleans and State of Louisiana, do hereby certify that the above and foregoing is a true and correct copy
45 of the original, same being annexed to act of deposit for record by Geo. F. Brott and ratification by A. W. Smyth and J. G. Richardson, which act was passed before A. Abat, late notary public of this City, on the 24th of July, 1880, of which original is on file and of record in my office.

Testimony and notes of evidence on behalf of plaintiff, taken in open Court, before Hon. Porter Parker, Judge presiding, on this 9th day of November, 1915:

First. Counsel for plaintiff offers, produces and files in evidence list of swamp lands selected from the approv*al filed* notes of V. Sulakowski, Deputy Surveyor, for surveys in Southeastern District of Louisiana, east of the river, under contract of Ross & Sulakowski, Deputy Surveyors, accruing to the State of Louisiana, under Act of Congress of March 2, 1849, except such portions rightfully owned or claimed by individuals in Township 12, South, Range 11 East, embracing Sections 15, 20 and 21, duly certified to by Fred. J. Grace, Register State Land Office, under certificate bearing date May 1, 1911, and marked "Exhibit Brott-1."

Second. A list of swamp lands inuring to the State of Louisiana under the Act of Congress of March 2, 1849, embracing Sections 15, 20, 21 and 22, referred to in the first offer, approved by the Secretary of the Interior for the United States of America, under date of April 10, 1874, duly certified to by Fred J. Grace, Register State Land Office, on May 6, 1911, and marked "Exhibit Brott-2."

Third. Photographic copies of the field notes of the Sulakowski survey and certificate of the Commissioner of the General Land
46 Office, duly certified to by C. M. Bruce, Asst. Commissioner of the General Land Office on April 24, 1914, and marked "Exhibit Brott-3."

Fourth. Photographic copy of the contract between Sulakowski & Ross and the United States Government, dated June 7, 1871, for the survey of Townships 12 and 13 South, Range 11 East, St. Helene Meridian, Louisiana, certified to by C. M. Bruce, Assistant Commissioner of the General Land Office, bearing date January 30, 1914, being a contract between Sulakowski & Ross and the United States, represented by E. W. Foster, Surveyor General of the United States for the District of Louisiana, and marked "Exhibit Brott-4."

All of said Exhibits "Brott-1," "Brott-2," "Brott-3" and "Brott-4" being on file in Suit No. 92,795 of the Docket of the Civil District Court, Division "B," entitled, "Board of Directors of the Public Schools of the City of New Orleans v. New Orleans Land Co.

Fifth. Plan of Sulakowski and the indorsement thereon on file in suit Leader Realty Co. v. New Orleans Land Co., No. 20,818 of the Supreme Court of the State of Louisiana, marked as "Exhibit Brott-5." (Sent up in original.)

Sixth. Plan of survey and indorsements thereon by Pilie & Grandjean, Surveyors, showing survey of the Le Breton claim, certified to by the Commissioner of the General Land Office, on file in the suit of Leader Realty Co. v. New Orleans Land Co., No. 20,818 of the Supreme Court of the State of Louisiana, marked "Exhibit Brott-6."

47 Seventh. Field notes of Pilie & Grandjean, Surveyors, of the Le Breton survey, certified to by the Commissioner of the General Land Office, on file in suit No. 20,818 of the Supreme Court of the State of Louisiana, entitled Leader Realty Co. v. New Orleans Land Co., marked as "Exhibit Brott-7."

Eighth. Certified copy of Patent No. 1889, issued by the State of Louisiana to Andrew W. Smyth, under date of June 3, 1874, recorded in Volume 18, page 10, of the Book of Patents, State of Louisiana, relative to Sections 15 and 22, marked "Exhibit Brott-8."

Ninth. Certified copy of patent bearing the No. 1871, dated April 27, 1874, issued under certificate No. 1237, N. S. D., recorded in the State Land Office in Book of Patents, Vol. 18, page 1, issued by the State of Louisiana to George F. Brott, and embracing lots 1, 2, 3 and 4, comprising the whole of Section 12, Township 12 South, Range 11 East, Southeastern Land District of Louisiana, east of the Mississippi river, marked "Exhibit Brott-9."

Tenth. Copy of deed under private signature, conveying fractional Sections 12 and 22, Township 12 South, Range 11 East, Southeastern Land District of Louisiana, from Andrew W. Smyth to George F. Brott, duly acknowledged and of date August 21, 1873, recorded in the Conveyance Office of the Parish of Orleans, in Book 112, fo. 652, said act under private signature being annexed to an act of deposit passed before A. Abat, late Notary Public for the City of New Orleans, dated July 24, 1880, marked "Exhibit Brott-10."

48 We also offer, to be produced, copy of an act of sale by Geo. F. Brott to James G. Richardson, conveying an undivided half interest, dated May 15, 1874, and on said date acknowledged, recorded in Conveyance Office of the Parish of Orleans in Book 105, fo. 339, forming part of said act of deposit before A. Abat, Notary Public, dated July 24, 1880, marked "Exhibit Brott-11."

Twelfth. Copy of an act of retrocession, under private signature, conveying an undivided half interest in said land by James G. Richardson to George F. Brott, dated June 15, 1875, recorded in the Conveyance Office of the Parish of Orleans in Book 112, fo. 652, and forming part of said act of deposit before A. Abat, Notary Public, dated July 24, 1880, marked "Exhibit Brott-12."

Counsel for plaintiff also offers, produces and files in evidence certified copy of act of deposit made by George F. Brott, with plan annexed thereto made by W. H. Bell, Civil Engineer, of date October 30, 1880, of all the property comprised in Sections 15, 21 and 22, South, Range 11 East, situated in the corporate limits of the City of New Orleans, known as Park Place, compiled from the United States Surveys approved June 26, 1872, said map being attached to the act of deposit before A. Abat, late Notary, on October 26, 1880.

By Mr. Wall: Intervenor objects to this map, as being absolutely irrelevant to any issue in this case, because the same was never made the basis of the dedication of any streets through said property.

49 By the Court: I will rule it to the effect.

(Colloquy between counsel.)

By Mr. Schneidau: We offer the depositions of Robert R. Brott and Mrs. Martha Brott, taken under commission of this Court, at Seattle, Washington.

By Mr. Hart: I suppose that simply proves the heirship?

(Colloquy between counsel.)

By Mr. Wall: I join in the offers by plaintiff, on behalf of Geo. O. Brott, intervenor, except the map which I objected to.

By Mr. Schneidau: We also offer, on behalf of the plaintiff, the testimony of George O. Brott.

Testimony and Notes of Evidence on Behalf of Defendant, Taken in Open Court Before Hon. Porter Parker, Judge, Presiding, on This 9th Day of November, 1915.

By Mr. Louque: We offer in evidence the Auditor's Deeds 1089, 1090 and 1091, of date July 5, 1902, found in Transcript No. 16,175 of the Supreme Court of Louisiana, entitled Mrs. Daniel Shelly, et als., v. George G. Friedricks, pages 79 to 84.

By Mr. Wall: These deeds are objected to on the ground that the description therein contained is not sufficiently definite to
50 identify any of the property of intervenor.

By the Court: I will let that go to the effect.

Mr. Schneidau: The same objection is made by counsel for the plaintiff.

By Mr. Louque: I offer deed to the State of Louisiana, dated January 31, 1885, for taxes of 1882, standing in the name of Dr. B. F. Beugnot, found in the same transcript, at pages 85 to 89. Also the deed of sale to the State of Louisiana, dated January 31, 1885, for taxes of 1882 * * *

(Colloquy between counsel.)

By Mr. Louque: Also deed of sale to the State for taxes, in the name of Louis Castera, found in the same transcript, at pages 71 to 76.

By Mr. Wall: All of which is objected to on the same ground as the Auditor's deeds were.

By Mr. Schneidau: Counsel for the plaintiff joins in the same objection of counsel for intervenor, on the same grounds.

By the Court: Let it go to the effect.

51 By Mr. Louque: I also offer in evidence the decision of the Supreme Court in this case, reported in 117 Louisiana Reports, at page 679 and following.

By Mr. Wall: This offer is objected to as being res inter alios acta.

By the Court: Let it go to the effect.

By Mr. Schneidau: To which offer counsel for plaintiff joins in the objection of counsel for intervenor, on the same ground.

By Mr. Louque: We offer in evidence the deed of sale executed before Emile Laresche, Notary Public, June 13, 1862, being the sale from Frances Beugnot to Louis Castera, found in the same transcript, at pages 20 to 22.

By Mr. Wall: This is objected to as res inter alios acta.

By Mr. Schneidau: Counsel for plaintiff joins in the same objection, on the same grounds, and on the further ground that the property at that time belonged to the State of Louisiana.

By the Court: Let it go to the effect.

By Mr. Louque: I also offer in evidence the map which is annexed to said act of sale, copy of which is found in the same transcript, at page 23.

52 By Mr. Wall: That is objected to as irrelevant and not binding upon George F. Brott or his heirs, who were not parties thereto.

By Mr. Schneidau: The same objection on the part of counsel for plaintiff, on the same grounds.

By the Court: Let it go to the effect.

By Mr. Louque: We offer in evidence the deed of sale of George G. Friedricks to the New Orleans Land Co., executed before John C. Davey, notary public, January 15, 1907, found in transcript, entitled "Heirs of Louis Castera v. New Orleans Land Co.," found at page 231.

By Mr. Wall: That is objected to on the ground that it is entirely between other parties, and that the description in the deed does not identify the property claimed by intervenor in this suit.

By Mr. Schneidau: The same objection is made by counsel for the plaintiff, on the same ground.

By the Court: Let it go to the effect.

By Mr. Louque: In relation to the objection that it does not identify, I say it does identify just precisely and exactly the property in dispute in this case, for this reason * * *.

53 By the Court: I will let it go to the effect.

By Mr. Louque: We offer in evidence the deed of sale by Mrs. F. B. Faures to J. F. Beugnot, by act before Amedee Ducatel, on the 6th of June, 1853, found in said transcript at page 197, together with certification of registry in the Conveyance Office.

By Mr. Wall: I object to this act and all other acts offered in the same chain of title on the ground that they all refer to different property from that in contestation in this case, and ask that objection apply without repetition to all of the acts as they might be offered in this chain of title.

By the Court: Let it go to the effect.

Colloquy between counsel.

By Mr. Schneidau: Counsel for plaintiff joins in the same objection on the same ground as made by counsel for intervenor. This objection to apply to all this line of title.

By Mr. Louque: I offer the registry in the Conveyance Office in all the previous acts, and in all acts to be offered.

I offer in evidence the act of sale by Adrian Mairot to Mrs. F. B. Maures, executed before Amedee Ducatel, on the 23rd of May, 1853, and the registry in the Conveyance Office, found at page 198, of the same transcript.

54 Also the act of sale by Alphonse Ride to Adrien Mairot, executed before Amedee Ducatel, on the 6th of April, 1853, and the registry thereof, found in the same transcript, at page 199.

Also the act of sale by Louis Allard to A. Ride, executed before Ducatel, notary public, on the 10th of March, 1837, found at page 200 of the same transcript, and the registry in the Conveyance Office.

Also deed of sale by Mrs. Thomas Caillouet to Francesco de Riano, before S. de Quinones, notary public, found at page 201, of the same transcript.

Also the sale of Louis Allard to Alphonse Ride and C. Z. Collsen, executed before Felix Grima, notary public, on the 19th of January, 1837, and the registry thereof in the Conveyance Office.

Also act of deposit by Louis Allard, executed before Felix de Armas, on the 6th of March, 1829, found at page 203, of the same transcript.

Also act of sale by Francesco de Riano to Pierre Allard, executed before Michel de Armas, on the 4th of April, 1812, to be found at page 204, of the same transcript.

Also sale by Mateo Ostein to Francesco de Riano, executed before

P. Pedesclaux, notary Public, on the 21st of January, 1802, to be found at page 205, of the transcript.

Act of sale by F. Montreuil to Mateo Ostein, executed before P. Pedesclaux, on the 3rd of April, 1799, to be found at page 206, of the same transcript.

Act of sale by Widow A. G. St. Maxent to F. Montreuil, executed before P. Pedesclaux, on the 11th day of December, 1797,
55 to be found at page 207, of the same transcript.

Sale by Widow Almonaster to Louis Allard, executed before P. Pedesclaux on the 20th of January, 1803, to be found at page 208, of the same transcript.

I offer in evidence the confirmation of the Allard Tract by the Government of the United States, found in the American State Papers, Book —, fo. —.

I offer in evidence the sale made by the New Orleans & Western Railroad to the New Orleans Land Co., by act before Theodule Buisson, on the 15th day of January, 1885.

By Mr. Wall: We object to the offer of this act and all other acts in this chain of title, because they refer to different property, and they are irrelevant to any issue in this suit.

By Mr. Schneidau: In which objection counsel for plaintiff joins on the same ground.

By the Court: The same ruling.

By Mr. Wall: This objection and same ruling shall apply to all other acts of sale in this chain of title.

By Mr. Schneidau: The same objection and ruling on behalf of the plaintiff.

56 By Mr. Louque: I offer in evidence the sale by John Spansel to the New Orleans & Western Railroad, by act before Theodule Buisson, notary public, June 18, 1895, and the recordation of said deed in Conveyance Office, Book 156, fo. 486.

The deed of sale by John Spansel to New Orleans & Western Railroad by act before Buisson, registered in Conveyance Office, Book 157, fo. 521.

Deed of sale by W. S. Benedict and Percy S. Benedict to John Spansel before Theodule Buisson, on the 18th of June, 1895, and the registry thereof in Book 157, fo. 521.

The sale by Dennis Cronan to W. S. Benedict, on the 3rd of January, 1871, before Michael Gernon, notary public, and registered in Conveyance Office, Book 98, fo. 365.

Deed of sale by Alexander Brother to Dennis Cronan, January 21, 1860, before T. O. Stark, notary public, and the registry thereof in Book 84, fo. 329.

Deed of sale by A. Hodges, Jr. to Peter Conrey, by act before H. B. Cenas, notary public, on the 18th of ——, 1850, registered in Book 50, fo. 61.

Deed of sale by Francois Alpuente to A. Hodge, Jr., on the 19th of May, 1836, by act before Amedee Ducatel, notary public, and the registry thereof.

The sketch of survey and approval by the United States Government to be found at page 215, of the same transcript, and to be found

in American State Papers, Volume 16, page 699, Gail's & Seaton's Edition, confirmed by Act of Congress approved March 3,
57 1835, Statutes at Large, Volume 4, page 779, Middleton & Brown Edition.

I offer in evidence the printed pamphlet entitled "Peake v. City of New Orleans," No. 12,008 of the Circuit Court of the United States, and all of the proceedings in said case, the pleadings, orders, deed of sales and judgments, orders of sales, report of the master under the order of sale, the confirmation of the sale by the United States Court, and the judgment of the Circuit Court of Appeals affirming the judgment which confirmed the sale.

By Mr. Wall: I object to this offer as being res inter alios acta and not binding upon the intervenor in this suit.

By Mr. Schneidau: In which objection, counsel for the plaintiff joins, on behalf of the plaintiff.

By the Court: Let it go to the effect.

By Mr. Louque: I forgot to offer in evidence the decision of the Supreme Court in this case, No. 17,697, of the Supreme Court, reported in 125 Louisiana Reports, page 877, and following.

By Mr. Wall: Objected to as being res inter alios acta.

By Mr. Schneidau: The same objection on behalf of the plaintiff.

By the Court: The same ruling.

58 By Mr. Louque: I also offer in evidence map showing the right of way of the New Orleans & Western Railroad.

By Mr. Wall: This is objected to as being entirely incompetent to vary an official United States map.

By Mr. Schneidau: The same objection.

By the Court: The same ruling.

By Mr. Louque: I offer in evidence the printed record of the United States Circuit Court of Appeals for the Fifth Circuit, No. 2117, and the judgment of the Court rendered therein.

I offer in evidence the testimony of Mr. J. F. Coleman in the matter of Board of Directors of the Public Schools of New Orleans v. New Orleans Land Co., No. 92,795, Civil District Court, Division "B."

I offer in evidence the act of sale before John Wagner, notary public, of July 1, 1912, of the sale of Squares 931 and 932 by the Heirs of Castera to the New Orleans Land Co., and the registry thereof in the Conveyance Office.

By Mr. Wall: Objected to on the ground that the property is entirely different and distinct from any involved in this suit, and because the Heirs of Castera had no valid title thereto.

By Mr. Schneidau: In which objection counsel for plaintiff joins on behalf of the plaintiff, on the same grounds.

59 By the Court: The same ruling.

It is agreed that at the argument of this case either side shall have the right to offer additional documentary evidence, subject to any legal objection that may be made.

Note by Shorthand Reporter.

It was agreed between all counsels herein that the shorthand reporter should copy into this Record the testimony and notes of evidence taken on January 21, 1914, before Hon. Fred D. King, Judge, in the matter of Board of Directors of the Public Schools of New Orleans v. New Orleans Land Co., No. 92,795, Civil District Court for the Parish of Orleans. The evidence in said case to be considered as evidence in this case.

The transcript of said testimony follows:

Civil District Court, Division "B," Parish of Orleans.

No. 92795.

BOARD OF DIRECTORS OF THE PUBLIC SCHOOLS OF NEW ORLEANS

versus

NEW ORLEANS LAND CO.

Testimony and Notes of Evidence Taken in Open Court on the Trial on Wednesday, January 21, 1914, Before Hon. Fred D. King, Judge, Presiding, on Behalf of Defendant.

60 Appearances:

For Plaintiff: I. D. Moore, City Attorney, and J. C. Henriques and W. W. Wall, of Counsel.
For Defendant: Charles Louque and W. O. Hart.

By Mr. Louque: The New Orleans Land Company, defendant, offers in evidence the deed of sale by Carlos Terascon to Andres Jung, executed before Andres Almonaster de Roxas, of date July 3, 1773, marked "D-1."

By Mr. Wall: We object to this offer on the ground that it is in the Spanish language and not accompanied by a translation; we make the further objection that it is recited in the instrument that the property was acquired by a concession by Aubry and Foucault, representing the government of France, at a time when Louisiana was Spanish territory, to-wit, in 1766.

By Mr. Louque: It says during the domination of the French.

By Mr. Wall: And we object to the recitals as to the origin of this title, on the ground that they are simply unsworn statements contained in a deed between other parties than those to this suit. We make the further objection that any evidence in support of the title sought to be offered in evidence here is inadmissible until some concession or grant, emanating from the sovereign authorities is shown, and we make the fu-ther objection that there is no evidence as to this alleged French grant, as ever having been submitted to

any of the boards created by the various acts of Congress for
61 the determination of the validity of titles in Louisiana under the French and Spanish governments, which has not been shown; and until such presentation and action by the Board of Commissioners is proven, no such incomplete title is admissible in evidence against any grant emanating from the United States Government.

By Mr. Hart: When the record is perfected for the Judge, we will place translations of all of these documents in the record.

By the Court: The Court shall certainly order any document either in the French or Spanish language, offered in evidence in this case, to be translated.

By Mr. Hart: Why not make a general agreement that when this record is ready for the Judge, we will produce translations?

By the Court: The Court orders that all documents in Spanish or French, when filed, shall be accompanied with translations of the same in the English language.

On the objections to the act itself, the Court rules to let the objections go to the effect and not to the admissibility of the documents.

By Mr. Louque: The New Orleans Land Company offers in evidence the deed of sale by Andres Jung to Mariana, free woman of color, executed before Almonaster, on the 8th of March, 1774, marked "D-2."

62 By Mr. Wall: It is agreed and understood that the objections made to the first offer shall apply to all acts of sales and other documents offered in evidence, either in the French or Spanish language.

By Mr. Louque: The New Orleans Land Company next offers in evidence the deed of sale by Mariana, free woman of color, to Manetta, free woman of color, before Almonaster, of date May 14, 1776, marked "D-3."

Next offer in evidence the will of Manette, executed before Mazange in favor of Michel Deruisseau, of date October 3, 1782, marked "D-4."

Sale by Michel Deruisseau to Jacques Proffet and D. Urquhart, before Narcisse Droutin, of date 25th May, 1804, marked "D-5."

Sale by Jacques Proffet to Alexander Milne, executed before Narcisse Droutin, on the 17th of June, 1807, marked "D-6."

Sale by Alexander Milne to George W. Morgan, executed before Narcisse Droutin, on the 12th of January, 1804, marked "D-7."

Sale by George Morgan to Alexander Milne, executed before Narcisse Droutin, on October 22, 1805, marked "D-8."

Sale by Alexander Milne to Thomas Urquhart and David Urquhart, and executed before Carlisle Pollock, on the 19th of October, 1830, marked "D-9."

Will of Marie Noyant and Michel Deruisseau before Pierre Pedesclaux, on the 25th of January, 1829, marked "D-10."

63 By Mr. Wall: Objected to on the ground that this will cannot be carried into effect unless it is shown that it was ordered probated by some court of competent jurisdiction.

By the Court: The Court sustains this objection, unless it is hereafter shown that this will was properly probated by order of court.

By Mr. Louque: We next offer in evidence sale by the succession of Marie Michel, alias Marie Nogant, to Louis Peyse Ferry, executed before Louis T. Caire, December 1, 1829, marked "D-11."

By Mr. Wall: We object to the sale just offered in evidence unless it be accompanied by the order of Court and the return of the party commissioned by the probate Court to make the sale. It is a judicial sale in which simply the notarial act is given.

By the Court: Let the objection go to the effect to be given to the document and not to its admissibility.

By Mr. Louque: Next offer in evidence sale by Louis Peyse Ferry to Alexander Milne, before Louis T. Caire, on the 14th of December, 1829, marked "D-12."

Next offer in evidence sale by Michel Deruisseau to Alexander Milne, before Narcisse Droutin, May 4th, 1804, marked "D-13."

Next offer sale by Milne Asylum for Destitute Orphan Girls to the New Orleans Land Company before W. Morgan Gurley, on
64 April 4, 1903, marked "D-14."

Next offer sale by Milne Asylum for Destitu-e Orphan Boys to the New Orleans Land Company, on April 4, 1903, before W. Morgan Gurley, Notary, marked "D-15."

Next offer in evidence ratification by the Milne Asylum for Destitute Orphan Girls, before John C. Davey, Notary Public, on February 28, 1905, marked "D-16."

Next offer in evidence ratification by the Milne Asylum for Destitute Orphan Boys, before John C. Davey, Notary Public, on February 28, 1905, marked "D-17."

Next offer in evidence sale by Maria Chagne, free woman of color, to Jose Dupard, before Pierre Pedesclaux, on the 10th of September 1799, reciting sale by Joseph Chagne to Marie Chagne, marked "D-18."

Next offer in evidence sale by Joseph Dupare to de Moran before Pierre Pedesclaux, on the 20th of March, 1805, marked "D-19."

Next offer in evidence sale by the Sheriff for drainage taxes—De Moran—on October 10, 1863, and registered in Conveyance Office Book 85, folio 641, marked "D-20."

By Mr. Wall: This document is objected to unless it is accompanied by the judgment, fi. fa., and the sheriff's return.

65 By the Court: Let the objection go to the effect and not to the admissibility of the document.

By Mr. Louque: We offer in evidence certificate of the custodian of records of the Civil District Court, Parish of Orleans, relative to the missing records of the Third District Court, in the matter of the Commissioners of the First Drainage District, praying for homologation of assessment roll No. 17028, which is missing and cannot be found. This certificate is found printed on page 85 of record entitled "Andrew Smyth vs. New Orleans Land Company" No. 21017, United States Circuit Court.

By Mr. Wall: We object, until the certificate is produced, and we object to anything in that Smyth record. Here is a certificate which

was signed by a person not authorized by law to issue same, and if he was authorized, he undertakes to certify to a fact, and no officer can certify to the existence of a fact that a record is lost.

By Mr. Louque: I ask to be sworn; I have made the proper research, and the record cannot be found.

By the Court: You had better take the stand, Mr. Louque.

CHARLES LOUQUE, who, being first duly sworn by the Minute Clerk, testified as follows:

I have made due and diligent search, not once, but ten times, for the record in the case of the Commissioners of the First Drain-
66 age District, praying for judgment to homologate the assessment for drainage, and I have been unable to find the original document; all that I did find were the entries in the minutes, copies of which I secured.

By Mr. Henriques:

Q. Were you the custodian of those records?

A. No; I am not the custodian; but I have the same right as every other attorney to go there and examine, and I have been doing this for forty-eight years, and that should be long enough to know where the records are.

By Mr. Hart:

Q. You spoke with particular reference to the judgment, fi. fa. and sheriff's return upon which title to document "D-20" is based?

A. Yes; all of the records that I could not find nobody else could either.

By Mr. Moore:

Q. You cannot say that.

A. But I got Mr. Abadie, and he could not find them either, and I got this certificate.

By the Court: Let the objection go to the effect to be given to the testimony, and not to its admissibility.

By Mr. Louque: We offer in evidence certified extract from the minutes of the late Third District Court, of date August 24, 1861, in the case No. 17028, to be produced.

67 By Mr. Wall: We object until the minute book is produced, and not what is given in a printed book.

By Mr. Hart: The minute book is part of the records of this Court.

By the Court: You can offer it in evidence to be produced.

By Mr. Louque: I offer in evidence the minute book, to be produced.

By Mr. Henriques: And we reserve our right to object when produced.

By the Court: Let the objection go to the effect, subject to counsel's right to object to the book when it is produced.

By Mr. Louque: We also offer in evidence another certified extract to be produced, of the minutes of the late Third District Court, in suit No. 17028 of date March 11, 1863.

By Mr. Henriques: We urge the same objection.

By the Court: The Court makes the same ruling.

By Mr. Louque: We also offer in evidence a certified extract of the docket entries in that case No. 17028 from February 5, 1863, commencing with petition, 20 cents, to December 1, 1871, motion
68 to transfer case to the Seventh District Court, 50 cents.

By Mr. Henriques: Same objection, reserving our right to object when the document is produced.

By the Court: Let the objection go to the effect and not to the admissibility of the documents when produced.

By Mr. Louque: We also offer in evidence act of partition between the four asylums by Milne, before Achilles Chiapella, on the 29th of August, 1845.

By Mr. Henriques: Objected to as totally irrelevant.

By the Court: Let the objection go to the effect and not to the admissibility of the document.

By Mr. Louque: We offer in evidence the printed record of the Circuit Court of the United States Court of Appeals for the Fifth Circuit, No. 46, entitled City of New Orleans v. James W. Peake.

By Mr. Henriques: We object to the introduction of any printed record in any other case.

By Mr. Louque: This is part of our title; we bought at the sale under these proceedings.

By Mr. Henriques: You have the right to offer the record, but not the evidence; we object to that record on the ground that it
69 is incumbering this record with a lot of matters which have no place in here.

By Mr. Louque: It is agreed in case of appeal that this printed record shall go to the Supreme Court in its original form.

By the Court: The evidence forms no part of a record, I always understood.

By Mr. Wall: Yes, your Honor; when you offer a printed record, that means that you offer the entire book.

By Mr. Hart: Let the record speak for itself; it is either admissible or inadmissible.

By Mr. Louque: I offer in evidence the inventory that was taken in this case by Taylor, Notary, on the 18th of November, 1891. The rule taken against the City of New Orleans to transfer this property to the Receiver; the act of transfer before Joseph D. Taylor, from the City of New Orleans to the Receiver; the petition and order of sale by the Receiver for sale of this property; and the advertisements in the Daily Picayune and the New Orleans Bee, and the proces verbal of the Receiver, and his adjudication of the property. Also the confirmation of this sale by the Circuit Court of the United States.

We also offer in evidence the sale made by the Milne Orphan Asylum for Destitute Girls to the Commissioners of the First
70 Drainage District, executed before Madden, Notary Public, on the 10th of September, 1863; and also the sale by Dr. C. A.

Gaudet to the New Orleans Swamp Land Reclamation Company; a copy of the charter of the New Orleans Land Company changing its name from the New Orleans Swamp Land Company to the New Orleans Land Company, executed February 20, 1893, before James Fahey, Notary Public.

Also offer in evidence extract from the inventory of the Succession of Milne, of date October 29, 1838.

By Mr. Henriques: We object to all of these previous offers from the last time we objected to the present time, on the ground of their being irrelevant; and this objection is made in addition to the previous objections already urged.

By the Court: The objection is overruled as going to the effect to be given the documents, and not to their admissibility.

By Mr. Louque: I offer in evidence certified copy of the map certified to by the Land Office, by Grace, Registrar, of date 27th March, 1911.

By Mr. Henriques: We object to this map, because upon the face of the map it shows that H. J. Williams, Surveyor General of Louisiana, refused to approve this map, and rejected same, as appears from the face of the map, the indorsement being "Surveyor General's Office, Donaldsonville, La., 28th April, 1840. The above map has been made out from field notes which have been examined and
71 found to be correct; but the approval of the township map is withheld on account of conflicting claims." And for further reason that this township was officially afterwards surveyed by the United States under a contract with Ross & Sulakowski, which has been offered in evidence, and which survey was approved by the Surveyor General of Louisiana, and by the Department of the Interior, and which is the only official survey of this township of record.

By the Court: Let the objection go to the effect and not to the admissibility to be given the document.

By Mr. Louque: We offer in evidence the decree of the Circuit Court of Appeals, reported in the 52nd Federal Reporter.

We also offer in evidence the map of d'Hemecourt of the 27th of February, 1892, exhibited at the sale of the Receiver, by which we bought.

We also offer in evidence the map of the New Orleans Land Company, made by J. F. Coleman, Engineer, February 15, 1908.

By Mr. Henriques: We object to the introduction of these maps, if anything on the said maps pretends to affect or be in conflict with the official survey of this township, as made by Ross & Sulakowski, under the contract with the government of the United States.

By the Court: Let the objections to the documents go to the effect, and not to the admissibility of the documents.

Case continued to be assigned for argument.

72 EXHIBIT MARKED "P-7."

(*List of Swamp and Overflowed Lands.*)

Offered in Evidence by Counsel for Plaintiff.

Filed October 30, 1914.

Swamp Lands.

No. 31.

A list of swamp and overflowed lands selected as inuring to the State of Louisiana under the provisions of the Act of Congress Approved March 2, 1849, in the district of lands subject to sale at New Orleans, Louisiana, viz:

Southeastern District, East of Mississippi River.

Parts of sections.	Sec.	T.	R.	Surveyed area. Acres. Hdths.	Unsurveyed area. Acres. Hdths	Total area. A. H.
Southeastern District East of Miss. River,		S.	E.			
Lot or Sec.....	10	12	11	40.09	.....	40.09

General Land Office, Swamp Land Division.

October 20, 1882.

This certifies that the tract of land embraced in the foregoing list containing forty acres and nine-hundredths of an acre, was duly selected and reported to this office by the United States Sur-
73 veyor General for Louisiana as land shown to be swamp and overflowed land by the field notes of survey as authorized by letters from this office dated April 18, 1850. The tract books of this office show that that said tract is free from conflict by sale or otherwise.

E. KILPATRICK,
Examining Clerk.

HENRY A. WIND,
Acting Chief of Swamp Land Division.

Department of the Interior,
General Land Office,
October 20, 1882.

The foregoing list of swamp land selections, embracing an area of forty acres and 9/100 of an acre, is respectfully submitted to the Secretary of the Interior and recommended for approval.

L. HARRISON,
Acting Commissioner.

Department of the Interior, 23 October, 1882.
J. K. M. C.

The foregoing list of swamp land selections is hereby approved, subject to any valid legal rights that may exist to any of the land therein described.

M. L. JOSLYN,
Acting Secretary.

74 I, N. C. McFarland, Commissioner of the General Land Office, certify that the foregoing is a true copy of Approved List No. 31, of Swamp and Overflowed Lands, selected as inuring to the State of Louisiana, under the provisions of the Act of Congress, approved March 2, 1849, in the district of lands subject to sale at New Orleans, Louisiana.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land-Office to be affixed, at the City of Washington, the 15th day of November, 1882.

[SEAL.] N. C. McFARLAND,
Commissioner.

State Land Office.

Baton Rouge, La., April 25, 1911.

I hereby certify that this copy is a true and literal exemplification of the record to which it purports to relate now on file in this office.

[SEAL.] (Signed) FRED J. GRACE,
Register State Land Office.

75 EXHIBIT MARKED "P-8."

(*List of Swamp Land.*)

Offered in Evidence by Counsel for Plaintiff.

Filed October 30, 1914.

Southeastern District of Louisiana, East of Mississippi.

List of swamp and overflowed land, selected from the approved field notes of V. Sulakowski, D. S., for surveys made in Southeastern District, Louisiana, East of the river, under contract of W. R. Koss and V. Sulakowski, Dep. S., accruing to the State of Louisiana, under the provisions of an Act of Congress, approved March 2, 1849, excepting such portions thereof as are rightfully claimed or owned by individuals.

T. 12 S., R. 11 E.

Parts of sections.	Section.	Area.	Remarks.
The whole of	8	281.70	
The whole of	15	63.74	
The whole of	16	258.42	School Section
The whole of	17	479.65	
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of	20	270.19	
The whole of	21	97.49	
The whole of	22	38.08	
The whole of	24	136.12	
The whole of	25	4.22	
The whole of	28	5.96	
Lots 6, 7, 8, 9, 10 and 11 of	29	208.98	
The whole of	30	221.20	
The whole of	31	88.24	
The whole of	32	455.92	
The whole of	33	43.40	
Total		2,653.31	

76 Office of Surveyor General.

District of Louisiana.

New Orleans, June 23, 1872.

Examined and Approved.

E. W. FOSTER,
Surveyor General, Louisiana.

Office of Surveyor General.

District of Louisiana.

New Orleans, June 17, 1873.

I certify that the above is a correct transcript of the list of swamp selections in T. 12 S. R. 11 E., transmitted by me to the Commissioner of the General Land Office on the 23rd day of June, 1872.

E. W. FOSTER,
Surveyor General, Louisiana.

State Land Office.

Baton Rouge, La., May 1, 1911.

I hereby certify that this copy is a true and literal exemplification of the record to which it purports to relate, now on file in this office.

(Signed) FRED J. GRACE,
Register State Land Office.

[SEAL.]

77 EXHIBIT MARKED "P-9."

(*List of Swamp and Overflow Lands.*)

Offered in Evidence by Counsel for Plaintiff.

Filed October 30, 1914.

Swamp Lands.

No. 18.

A list of swamp and overflow lands selected as inuring to the State of Louisiana, under the provisions of the Act of Congress, approved March 2, 1849, in district of lands subject to sale at New Orleans, La., viz:

Swamp Lands.

Parts of sec.	Sec.	Twp. S.	Rnge. E.	Surv'd area. Acs.	Surv'd area. Hdths.	Unsurveyed area. Acs.	Unsurveyed area. Heth.	Total area. Acs.	Total area. Hdths.
Lot 1.....	8	12	11	26	55	..	..	..	..
Lot 6.....	8	..	..	27	30	..	..	..	..
Lot 7.....	8	..	..	21	59	..	..	..	..
Lot 1.....	17	..	..	26	20	..	..	..	..
Lot 6.....	17	..	..	32	00	..	..	..	..
Lot 7.....	17	..	..	38	74	..	..	..	..
Lot 12.....	17	..	..	40	00	..	..	..	..
Lot 1.....	20	..	..	14	18	..	..	..	..
Lot 8.....	20	..	..	9	39	..	..	..	..
Lot 6.....	29	..	..	35	56	..	..	..	..
Lot 7.....	29	..	..	40	00	..	..	..	..
Lot 8.....	29	..	..	40	00	..	..	..	..
Lot 9.....	29	..	..	40	00	..	..	..	..
Lot 10.....	29	..	..	41	84	..	..	..	..
Lot 11.....	29	..	..	4	32	..	..	..	..
								437	97

General Land Office,

Swamp Land Division,

May 2, 1874.

This certifies that the tracts embraced in the foregoing list have been duly selected and reported to this office as swamp and
78 overflow lands by the United States Surveyor General for Louisiana; also that they have been compared with the tract books and township plates of this office, and found to be free from interference by sale or otherwise.

(Signed) SAM R. EDWARDS,
Clerk.

(Signed) E. KILPATRICK,
Head of Swamp Division.

Department of the Interior,

General Land Office.

May 2, 1874.

Respectfully submitted for approval.

(Signed) W. W. CURTIS,
Acting Commissioner.

Department of the Interior.

May 5, 1874.

The foregoing list of swamp selections is hereby approved, subject to any valid legal rights that may exist to any of the tracts therein described.

(Signed) B. R. COWEN,
Acting Secretary.

I, W W. Curtis, acting commissioner of the General Land Office, certify that the foregoing is a true copy of approved list No. 18 of swamp and overflowed lands selected as inuring to the State
79 of Louisiana, under the provisions of the Act of Congress, approved March 2, 1849, in the district of lands subject to sale at New Orleans, La.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the City of Washington, the 21st day of May, 1874.

(Signed) W. W. CURTIS,
[SEAL.] *Acting Commissioner.*

State Land Office.

Baton Rouge, La., April 25, 1911.

I hereby certify that this copy is a true and literal exemplification of the record to which it purports to relate now on file in this office.

(Signed) FRED J. GRACE,
[SEAL.] *Register State Land Office.*

EXHIBIT MARKED "P-10."

(*A List of Swamp and Overflowed Lands.*)

Offered in Evidence by Counsel for Plaintiff.

Filed October 30, 1914.

No. 16.

A list of swamp and overflowed lands selected as inuring to the State of Louisiana, under the provisions of the Act of Congress approved March 2, 1849, in the District of Lands subject to sale at New Orleans, La., viz:
80

Parts of sections east of Mississippi River.	Section.	Township.	Range.	Unsurveyed acres.	Area, hdths.
All	..	S.	E.	.....	....
All	15	12	11	63.74	....
All	21	..	..	97.49	....
All	22	..	..	38.08	....
All	24	..	..	136.12	....
All	25	..	..	4.22	....
All	28	..	..	5.96	....
All	30	..	..	221.20	....
All	31	..	..	88.24	....
All	32	..	..	455.92	....
All	33	..	..	43.40	....
Total Area				1,154.37	

General Land Office,

Swamp Land Division.

April 9, 1874.

This certifies that the tracts embraced in the foregoing list have been duly selected and reported to this office as swamp and overflowed lands by the United States Surveyor General for Louisiana, also, that they have been compared with the tract books and township plats of this office and found to be free from interference by sale *of* otherwise.

SAM R. EDWARDS,
Clerk.

E. KILLPATRICK,
Head of Swamp Division.

Department of the Interior,

General Land Office.

April 9, 1874.

Respectfully submitted for approval.

WILLIS DRUMMOND,
Commissioner.

81 Department of the Interior.

April 10, 1874.

The foregoing list of swamp selections is hereby approved subject to any valid legal rights that may exist to any of the tracts therein described.

B. R. COWEN,
Acting Secretary.

I, Willis Drummond, Commissioner of the General Land Office, certify that the foregoing is a true copy of Approved List No. 16, Louisiana, under the provisions of the Act of Congress, approved March 2, 1849, in the District of Lands subject to sale at New Orleans, La.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed at the City of Washington, the 14th day of April, 1874.

[SEAL.] WILLIS DRUMMOND,
Commissioner.

State Land Office.

Baton Rouge, La., May 6, 1911.

I hereby certify that this copy is a true and literal exemplification of the record to which it purports to relate, now on file in this office.

(Signed) FRED J. GRACE,
[SEAL.] *Register State Land Office.*

82 EXHIBIT MARKED "P-11."

(*List of Swamp and Overflowed Land.*)

Offered in Evidence by Counsel for Plaintiff.

Filed October 30, 1914.

Southeastern District, Louisiana, East of Mississippi.

List of swamp or overflowed land selected from the approved field notes of V. Sulakowski, D. S., for surveys made in Southeastern District, Louisiana, east of the river, under contract of W. R. Ross and V. Sulakowski, Dep. Ss., accruing to the State of Louisiana, under the provisions of an Act of Congress, approved March 2, 1849, excepting such portions thereof as are rightfully claimed or owned by individuals.

T. 12 S. R. 11 E.

Part of sections.	Section.	Area.	Remarks.
The whole of	16	258.42	School Section.

Office of Surveyor General,
District of Louisiana.

New Orleans, June 23, 1872.

Examined and approved.

E. W. FOSTER,
Surveyor General, Louisiana.

83 Office of Surveyor General,
District of Louisiana.

New Orleans, June 17, 1873.

I certify that the above is a correct transcript of the list of swamp selections in T. 12, S. R. 11 E. Transmitted by me to the Commissioner of the General Land Office on the 23rd day of June, 1872.

E. W. FOSTER,
Surveyor General, Louisiana.

Department of the Interior,
General Land Office,
Washington, D. C.

February 11, 1896.

The Register and Receiver,
U. S. Land Office,
New Orleans, La.

SIRS:

The following tracts of land in your district, being square Sections 16 and described parts of such Section 16, within township which were surveyed prior to the swamp land grants, were selected by the State as swamp lands under the Acts of March 2, 1849, and September 28, 1850, (9 U. S. Stats. 352 and 519), as the title to said lands vested in the State by virtue of the Acts of April 21, 1806, and March 3, 1811, (U. S. Stat. 391 and 662), granting such Section 16 to the State for the support of schools; said lands were not subject to selections by the State under the swamp land grants, and the swamp land claim of the State thereto, is hereby held for rejection accordingly.

84 The following are the lands referred to:
East of River; all of Section 16, T. 12 S. R. 11 E.

* * * * * * *

Very respectfully,

E. F. BEST,
Asst. Com.

State Land Office,
Baton Rouge, La.

April 8, 1910.

I, Fred J. Grace, Register of the State Land Office, do hereby certify that the foregoing two pages are true and correct copies of the records to which they purport to relate on file in this office, showing that the "square Section Sixteen" in the township written, was selected as swamp land but subsequently rejected for the reason that Acts of April 21, 1806, and March 3, 1811, granted same to the State for the support of schools.

Witness my official signature and seal of office, this 8th day of April, 1910.

(Signed) FRED J. GRACE,
[SEAL.] *Register of the State Land Office.*

EXHIBIT MARKED "P-12."

(Document Certified to by L. Cohn and A. B. Kennedy, Former Register and Receivers of the United States Land Office of the State of Louisiana.)

Offered in Evidence by Counsel for Plaintiff.

Filed October 30, 1914.

85 Department of the Interior,

General Land Office.

Washington, D. C., May 4, 1896

The Register and the Receiver,
U. S. Land Office,
New Orleans, Louisiana.

SIRS:

I am in receipt of your letter of April 25, 1896, reporting with evidence of service that due notice was given to the proper State authorities of office decision "K" of February 11, 1896, holding for rejection the swamp claim of the State, to a number of tracts in school sections 16 in the State of Louisiana, and that no action has been taken in the premises, nor appeal filed.

No appeal having been filed, and the time therefor having expired, said decision of February 11, 1896, has become final, and pursuant thereto, the State claim to the lands described in said decision of February 11, 1896, is hereby rejected.

You will make corresponding notation on your records and advise all parties in interest hereof.

Very respectfully,

E. F. BEST,
Assistant Commissioner.

New Orleans, La., April 8, 1910.

We hereby certify that the above is a true and correct copy of the original now on file in the United States Consolidated
86 land Office, situated at New Orleans, Louisiana.

(Signed) WALTER L. COHEN,
Register.

(Signed) A. B. KENNEDY,
Receiver.

EXHIBIT MARKED "P-13."

(Document Certified to by Walter L. Cohen and A. B. Kennedy, Former Register and Receiver of United States Land Office of the State of Louisiana.)

Offered in Evidence by counsel for Plaintiff.

Filed October 30, 1914.

Department of the Interior,

General Land Office.

Washington, D. C. February 11, 1896.

The Register and Receiver,
U. S. Land Office,
New Orleans, Louisiana.

SIRS:

The following tracts of land, in your district, being square sections 16 and described parts of such sections 16, within township which were surveyed prior to the swamp land grant, were selected by the State, as swamp lands, under the acts of March 2nd, 1849, and September 28, 1850 (9 U. S. 352 and 519). As the title to said lands vested in the State, by virtue of the act of April 21, 1806, and March 3, 1811, (2 U. S. Stats., 391 and 662), granting such sections
87 16 to the State for the support of schools; said lands were not subject to selections by the State under the swamp land grant, and the swamp land claim of the State thereto, is hereby held for rejection accordingly.

The following are the lands referred to:

South Eastern District, Louisiana.

Parts of section.	Sec.	T. S.	R. E.	Surveyed.	Date swamp s'l'ct'on.
E. of River, All of	16	12	11	Oct. 26-27	Jan. 22, 1872.

Give due notice hereof to the proper State authorities, allow the usual time for appeal, and thereafter promptly report to this office with evidence of service of notice.

Very respectfully,

E. F. BEST,
Assistant Commissioner.

New Orleans, La., April 18, 1910.

We hereby certify that the above is a true and correct extract of the original letter now on file in the United States Consolidated Land Office situated at New Orleans, Louisiana.

(Signed) WALTER L. COHEN,
Register.

(Signed) A. B. KENNEDY,
Receiver.

88 EXHIBIT.

(*Deed from Carlos Terascon to Andreas Jung.*)

Offered in Evidence by Counsel for Defendant.

Filed April 2, 1914.

Almonester. 1773.

Page 170.

Terascon to Jung.
Venta Real.

Sepan cuantos esta carta vieren como yo Carlos Tarascon, vecino de esta ciudad otorgo que vendo realmente y con efecto a Don Andres Jung de este vecindario una habitacion mia propia cituada a una legua de esta cuidad en el Bayu San Juan compuesta de ocho arpanes de tierra de fronte y con el ordinario fondo de quaranta lindado por un lado con otra de Bartholome y porotro con otra de Don Antonio Maxent, la misma que have por concesion, que de ella me hizo Monsr. Aubry, Gobin. Frances, en el tiempo de su dominacion en vista de Stan. Foucault ordenador, como consta de las titulos que entrego al comprador; cuia habitacion de ocho arpanes, los vendo segun como al presente estan, y por libres de grabamen como lohe hecho constar por certificacion del anotador de hipotecas en precio de sesenta pesos que tengo recibidos de contado en oro de (que yo el Escribno. doy fee.) de que me doy por entregados a mi satisfacion y otorgo recivo en forma.

Me diante lo qual me aparte del derecho de proprietad posesion util senoria y de mas asciones reales y personales que a dichos ocho arpanes de tierra havia y tenia y todo lo cedo, renuncio y
89 traspaso en el comprador y en quien su causa hubieson para que como suyos las posea, vendo y enogene, a su voluntad en virtuade esta escriptura que a su favor atorgo en Senal de Rl. Entrega, con la que dever visto de haver adquirido pocesion sin que necesite de otra prueba, de que lo relevoy me obligo a evecion, seguridad y saneamiento de esta venta en bastante forma de ano y como mas convenga en favor del comprador y con mis bienes ventas presentes y futuras; doy poder a las justicias de su M. para que me

a premien a su complimiento con el rigor de sentencia, consentida y pas dos en autoridad de causa purgada solare que renuncio todas las leyes fueros d y privilegios de mi favor con la general que lo prohive. Y estando presente yo el dicho Don Andres Jung acepto a mi favor esta escriptura, y porella recivo comprados los ocho arpanes de tierra referidos de ellos me doy por entragado a mi voluntad, renuncio las pruebas leyes de su entrega, las de la cosa no vista ni recivida Dolo y dernas del caso de que otorgo recivo en forma. En cuio testimonio es fh la carta en esta cuidad de la Nueva Orleans a tres de Julio de mil settecientos settenta y tres.

Yo el Escribano doy fee conozco a los otorgantes que firmo el que supo y por el que dijo saver un testigo que lo fueron.

(Signed) RAYMOND GAILLARD,
DON PEDRO COULY, Y
DON ESTERAN DE QUINONES,
Presten.

JUNG.

Como testigo.
ESTEVAN JPH. DE QUINONES.

Ante me,
ANDRES ALMONESTER DE ROXAS,
Escr. Pub.

90 EXHIBIT.

(*Translation of Deed from Carlos Tarascon to Andreas Jung.*)

Offered in Evidence by Counsel for Defendant.

Filed January 4, 1915.

Almonester. 1773.

Page 170.

Sale of realty.

Know all who may see these presents, That I, Carlos Tarascon, resident of this city, declares that I, really and with effect, sell to Mr. Andres Jung, of this neighborhood, a habitation belonging to me, situated one league from this city, on the Bayou San Juan, composed of eight arpents of ground on the front with the ordinary depth of forty, bounded on one side by another (habitation) of C. Bartholome and on the other by another habitation of Don Antonio Maxent, being the same held by me by concession made to me by Monsr. Aubry, French Governor, at the time of his domination, before Stanr. Foucoult, Commissary, as appears in the titles that he delivered to the purchaser, which habitation of eight arpents I sell as they are at present and free from all encumbrances, as I make it appear by certification of the Registrar of Mortgages, for the price of Sixty Dollars (Pesos), which I have received in cash in gold (and

which I, the notary, certify to), and which are delivered to
91 me to my entire satisfaction, and the receipt of which I formally declare. At the same time that I dispose of my right of ownership, fiscal possession and title, and all other real and personal actions which I had and held in said eight arpents of ground, all of which I cede, renounce and transfer to the purchaser and in whom the same may be, in order that they shall possess, sell and alienate at his will by virtue of this document, which, in his favor, I declare is proof of the real delivery, which should be sufficient acquisition of the possession thereof without the necessity of other proof, from which I relieve him, and I obligate myself to the eviction, security and guarantee of this sale in sufficient form of ownership and as might be most convenient in favor of the purchaser, together with my present and future belongings; I empower Ser M., in order that they may force me to its completion with the effect of a judgment consented to and passed by an authority as a settled case, with respect to which I renounce all the laws, customs, rights and privileges in my favor, with the general one that may prohibit it. And being present, I, the said Mr. Andres Jung, I accept in my favor this instrument and through it, as purchaser, the eight arpents of ground referred to, which are delivered to me to my satisfaction, but I renounce the proofs and laws of its delivery, that of the house not seen nor received, and all of such that I might give a receipt in form for.

In testimony of which this writing is dated in this City of New Orleans, on the 3d of July, one thousand, seven hundred and seventy-three.

92 I, the notary, certify that I know the declarants, one signing who knew how and by him who said he knew not, one of those who was a witness signed.

(Signed) RAYMOND GAILLARD,
DN. PEDRO CONLEY, AND
DON ESTEVAN DE QUINONES,
Present.
JUNG.

Witness:
ESTEVAN JPH. DE QUINONES.

Before me,
ANDRES ALMONESTER DE ROXAS,
Public Writer.

EXHIBIT.

(*Sale of Andreas Jung to Marianne*)

Offered in Evidence by Counsel for Defendant.

Filed April 2nd, 1914.

Almonaster. 1774.

Page 71.

Jung to Mariana.
Venta Real.

Sepan Cuantos esta viesen como yo Don Andres Jung vecino de esta ciudad otorgo que vendo realmente y con efecto a Mariana, negra libre este vecindasio una habitacion mia propria, cituada a una legua de esta ciudad, compuesta de ocho arpanes de tierra de frente, y con el fondo ordinario de quarenta lindado por un lado con osta de St. Anz. Bartholome y por el otro con esta de Antonio Maxent
la misma que huve y compre de Carlos Tarascon, por
93 Escripne. que paso ante el presente Escritorio a la tres de Julio del ano proximo pasado: Cuia habitacion de ocho arpanes le vendo a la referia negra libre Mariana, segun y como al presente estan, y por libre de grabamen como lo he hecho constar por certificacion de anatador de hipoteca en precio de sesenta pesos que tengo recividos de contado a mi voluntua, y por no ser de presente su entrega y creencia, la excepcion de non enumerata pecunia. Dolo y demas del caso que otorgo recivo en forma: Y con la espresa y calidad y condicion que la cypriera enteramente que comprehenden dichas ocho arpanes de esta tierra ha de quedarcomun y a beneficio de mi dicho Jung como de la compradora, para que en qualquier tiempo que fuere de nuestra voluntad podamos hacer contel de ma dera y sacarlo sin impedimento alguno de nos enunciados otorgantes: Me diante lo qual me aparto de toro de propriedad pocesion y senoria y doman, aciones reales y personales, que dichosocho arpanes de tierra havia, y todo lo ceas y renuncio y traspaso en la compradora y en quien su causa hubiesa a que setios proprios cosposea venda o'enogene a su voluntad, en virtud de esta escriptura que a su favor en Sen. de Real Entrega, con lo que ha de ser visto haver adquirido en posesion cinque necesite de otra prueba de que le relebo, y me obligo a la evicion, segurida y saneamiento de esta venta en bassante forma de derecho, y como mas convenga en favor de la compradora, y con mustros bienes y ventas presentes y futuras doy poder a las justicias, Escript. para que me apremien a su cumplimiente con el rigor de sentencia concentida y parado esta autoridad de case pur-
gada sobre que renuncio todas las leyes fueros, derechas y
94 privilegios de mi favor can lo que lo prohive, y estando presente, yo ladicha Maria negra libre acepto a mi favor esa

escritura y porella recivo compra dos ocho arpanes de tierra de fronte en precio condicion y comformedad que han vendidos de ellas. Me doy por entrega do a mi voluntad, renuncio a la prueba, leyes de su entrega, las de la casa no vista ni recivida de lo y demas del caso que otorgo recivo en forma: En cuio testimonio es esta carta en esta cuidad de la Nueva Orleans, a ocho de Marzo de milsette cientos settenta y quatro.

Yo el Escribano doy fee conozco a los otorgantes, y que firmo el que supo y la que dijo no saver a seo ruego lo hizo sin testigos que lo fueron Don Juan Survey, Salomon Estalliones y Don Esteran de Quinones Pts. Antemi Andres Almonaster y Rojas, N. P.

STATE OF LOUISIANA,
Parish of Orleans:

I, the undersigned, Peter Stifft, Custodian of Notarial Records, in and for the Parish of Orleans and State of Louisiana, do hereby certify that the above and foregoing is a true and correct copy of the original on file and of record in my office.

Witness my hand and official seal this 4th day of April, 1911.

[SEAL.] Signed) PETER STIFFT,
Custodian of Notarial Records.

95 EXHIBIT.

(*Translation of Act of Sale from Andreas Jung to Marianne.*)

Offered in Evidence by Counsel for Defendant.

Filed January 4, 1915.

Almonester. 1774.

Page 71.

Sale of realty.

Know all who may read this, that I, Don Andreas Jung, a resident of this city, declare that I, in reality and with effect, sell to Marianna, a free negro, of this neighborhood, a habitation belonging to me situated one league from this city, composed of eight arpents of ground front and with the ordinary depth of forty, bounded on one side by another habitation belonging to St. An. Zr. Bartholome, and on the other by that of Antonio Maxent, being the same that I hold and bought of Carlos Tarascon by instrument executed before the present authority on the third of July of the year last past; which habitation of eight arpents I sell to the referred-to free negro Marianna according to and as it is at present and free of all encumbrances, as I have had it appear by certification of the Registrar of Mortgage, at the price of sixty dollars, which I have received in cash to my satisfaction, and, in order that there will be no effect upon its delivery as well as the exception of non enumerata pecunia. All and everything that I declare on is received in form. And with the express

quality and condition that the entire cypress lands which are em
braced in the said eight arpents of this land are to remain commo
property for my benefit (said Jung), as well as of the pur
96 chaser, in order that, at any time whatsoever, at our will, w
may cut the timber thereon and remove it without any im
pediment to us the said declarant. By means of which, part with th
property, its possession and title, and all other personal and rea
actions, which I had in the aforesaid eight arpents of ground, and al
of which I cede and renounce and transfer in the purchaser and i
whom his right might go, with the right to possess, sell and alienat
these sites at his will by virtue of this instrument, which, in thei
favor, I execute in testimony of real delivery, from which is to b
seen the acquisition thereof without the necessity of other proo
of which I release him, and I obligate myself to the eviction, securit
and guarantee of this sale in sufficient form of law, and as the pur
chaser might find most convenient, and with our goods and rent
present and future; I empower the Court * * *, in order to compe
me to its accomplishment with the full force of a confession of judg
ment, and, under this authority, to be classed as a settled case, to whic
end I renounce all the proofs and laws of delivery, rights and privi
leges which are in my favor, together with that which prohibits it, an
being present, I the said Marianna, free negro, accept in my favo
this instrument, and by it I receive as purchased the said eigh
arpents front of ground at the price, conditions and in conformit
with which the same has been sold. I acknowledge the delivery o
the same to my satisfaction, I renounce the proof and laws respectin
its delivery, as well as those of the house not seen or received, and a
laws respecting the matter of which I acknowledge receipt i
form.

97 In testimony of which, this writing is dated in this Cit
of New Orleans, on the eighth day of March, one thousan
seven hundred and seventy-four. I, the Notary, certify that I kno
the appearers and that he who knew how signed, and she, who sai
she did not know, at her request, I did it, without any witnesses.

(Signed) DON JUAN JUNG,
SOLOMON ESTALLIONES, AND
DN. ESTEVAN DE GUINONES,
Present.

Before me,
ANDRES ALMONESTER Y ROXAS,
Public Writer.

EXHIBIT.

(*Sale by Marianne to Nanette.*)

Offered in Evidence by Counsel for Defendant.

Filed April 2, 1914.

Almonaster. 1777.

Page 301.

Marianne to Nanette.
Venta real.

Sepan Quantos esta carta vieren, como yo Marianna, negra libre, vecina de esta ciudad otorgo que vendo realmente y con efecto a Naneta negra libra de esta vecindad, una habitacion mia propia situada una legua distante desta ciudad en el Bayu de San Juan, compuesta de ocho arpanes de tierra de fronte con el fondo ordinario de quarenta lindado por un lado por tierra del Nombr. Bartholome y porel otro por la teirra de Don Antonio Maxent la misma que hubo y comprode Don Andres Jung por Escriptura que paso ante el
98 presente Escrib. a ocho de Marzo de Mil sette cientos settenta y cuatro.

Yasi mismo lo vendo a la dicha Naneta, negra libre, dos bacas y cuatro terneros que estan sobre de habitacion, la qual le vendo a la referida can todas sus entradas uso castumbres, dros y seviseumbres y por libre de granamen e hipoteca como lohe hecho constar por certificacion del Anatodor de ellas in precio todo de Noventa y ocho pesis; que he recivido de contado de que me doy por entregado a mi voluntad, y por no ser de precita la entrega, senuncio la exception de la non enumerata pecunia y otorgo formal recivo.

Y declaro que el fino precio y verdadero valor de dichos ocho arpanes de tierra con los dos vacas y kuatro terneros espresados sin los insigneros novento y ocho pesos yue no vale mas, y si mas vale o calien de qualqueira precio que sea de esta entrega a la dicha compradora y a las suyos, gracia cecion donacion, "pieramen perfecto" acabado y isevocable quo el Don entervivos la sinsignuacion y renunciacion de la ely del ordenante R. fha en cortes De Alcalde De Llinaro que que hablan en razon de las cosas que se compran venden o permitan por mas omenos de la metad de repento y los quatro anos en este declaran por repetir engano enormo o enormesimonte caso que lo hay mediante lo qual me aparte y separo del dmo. de propriedad, posesion virit dominio y senoria que a oha habitacion y animales havia y tenia y todo lo cedo, renuncio y traspaso a la compradora y en quien su causa y dho hubiese por que como suo proprio
99 lo losea, vende cambia s'enogene a su voluntad on vistua de esta escriptura, que a su favor otorgo en senal de Entrega, lo que have ver, visto haver adquirido su precio sin que necesite de otra

prueba, de que le relevo: Y me obligo a la concione reguerida y saneamiento de esta venta en toda for de de ano, y con mis bienes havidas y por haver. Doy a qui por encertola clausula guarantizia y renuncio la ley de mi favor con la qual que lo prohive. Y estando presente al otorgante de esta Escriptura yo la dicha Naneta, negra libre la accepto en mi favor reciviendo por ella comprada d'ha habitacion con los dos vacas y quatro terneros; de todo, me doy por entregado a mi voluntad y otorgo formal recivo.

En cuio testimonio e fha le carta en esta ciudad de la Nueva Orleans a catorze de Mayo de Mil settaciente settenta a siete L los otorgantes a quienes yo el Escrib. Soyfie asi lo otorgo, y no firmaron porque dijeron no saver, a su ruego lo hicieron.

Dos de los testigos que se hallaron presentes que la fueron.

(Signed) FERNANDO RODRIG,
PEDRO COBLEY, Y
DON ESTEVAN DE QUINONES,
Duenos de Esta Ciudad.

Como testigo:
PEDRO IGN. CONLEY.

Como testigo:
Item DO RODRIG.

Ante mi:
ANDRES ALMONASTER DE ROXAS,
N. P.

100 EXHIBIT.

(*Translation of Act of Sale from Marianne to Nanette.*)

Offered in Evidence by Counsel for Defendant.

Filed January 4, 1915.

Almonester. 1777.

Page 301.

Sale of realty.

Know all those who might see this letter, that I, Mariana, a free negro, resident of this city, declare that I in reality and with effect sell unto Naneta, free negro, of this vicinity, an habitation belonging to me, situated one league from this city, on the Bayou St. John, composed of eight arpents of ground front with the ordinary depth of forty; bounded on one side by the land of Nombr, Bartholome, and on the other by the land of Antonio Maxent, being the same which I received and purchased of Andres Jung by instrument executed before the present public writer on the eighth of March, one thousand seven hundred and seventy-four.

And I also sell to the said Naneta, free negro, two cows and four calves, which are situated on said habitation, which I sell to the re-

erred to person with all its entrances, uses, custo s, rights and ervitudes, and free of all encumbrance and mortg , as is made to ppear by the certification of the Register of the same, at the price of ninety-eight pesos, which I have received in cash and which 01 I acknowledge to have received to my satisfaction, and in order that the delivery of the same might not be denied, I renounce he exception of non enumerata pecunia and declare formal receipt. nd I declare that the final price and true value of said eight arpents f ground, with the two cows and four calves referred to, without he — are not worth more than ninety-eight pesos, and if one or more f them should be worth more of whatever price it may be, I make elivery anyhow to the said purchaser and her successors, with re-ase, cession, donation, perfectly finished and irrevocable as a dona-ion inter vivos with the right to file and renounce the law of Royal rdinances in Courts of the city and without limitation, which treat respect to things which are bought, sold or mortgaged carelessly r more or less than half, and the four years which are referred to herein in plea of fraud, great or greatly, in case there be, by means f which I part with and separate myself from the ownership of the roperty, possession, domination and title to the habitation and ani-als which I had in said habitation and animals, all of which I cede, enounce and transfer to the said purchaser, or in whom her interest ay be, and in order that as hers she may possess, sell, change and lienate at will, by virtue of this instrument, I authorize in proof of elivery, which I make appear, relieving her of all necessity of mak-g proof that I have received the price. And I obligate myself to e cession, security and guarantee of this sale in full form as owner and with all my goods, present and future. I give here as in-02 serted the guaranteeing clause and renounce the law in my favor with which it could be prohibited. And being present the execution of this instrument, I, the said Nanette, free negro, cept it in my favor, receiving the said habitation as purchased, ith the two cows and four calves, all of which I declare to have been livered to my satisfaction and for which I declare formal receipt. testimony of which said writing being dated in the City of New rleans on the fourteenth of May, one thousand seven hundred and venty-seven, and the contracting parties, as to whom I, the said blic writer, certify to, did not sign, but authorized it, they saying ey did not know how to sign and, at their request, the same was ne by the two witnesses, who were present at the time.

(Signed) FERNDO RODRIG,
PEDRO CONLEY, AND
DN. ESTEVAN DE QUINONES,
Property Holders in This City.

As Witness.
PEDRO IGN. CONLEY.
As Witness.
FERNDO RODRIG.

Before me,
ANDRES ALMONESTER DE ROXAS,
N. P.

EXHIBIT.

(Translation of Will — M. Nanette.)

Offered in Evidence by Counsel for Defendant.

Filed January 4, 1915.

L. Mazange. 1782.

Page 834.

Know as I do all those who may read this letter, that I,
103 Magdalena Naneta, alias Lacled, free negro, a resident of this city, being sick abed, in my full judgment, memory and understanding, and while believing as a formal belief in the infallible mystery of the Holy Trinity, Father, Son and Holy Ghost, three real distinct persons, but in being truly but one, and believing, as I do believe, in the mystery of the incarnation of the Divine One, made man by his refuge in the pure bosom of the Virgin Mary, Mother of God and our Lord, and in all the other articles and mysteries which our mother, the English, Catholic, Apostolic and Roman Church, believes in, confesses, preaches and teaches, and which is ruled and governed by the Holy Spirit, in whose faith and belief I have lived and hope to continue until my death, fearing death, which is natural to all creatures, its hour and certainty and that death follows life, I desire to make my testament, and with your best favors and strength I, through my attorney, invoke the sovereign Queen of Angels my Holy Mary, in order that she may intercede for me with her precious Son, pardon the gravity of my faults and bless my soul with the supplication and divine invocation, I make it in the fol-owing form:

First. I commit my soul to the same God who gave it me, created it and redeemed it with the precious and infinite labor of His blood, passion and death, and I pray to you that from His merciful bosom He will deign to pardon it and bring its suffering to eternal rest. The body I commit to the earth, from which it was formed, and when it dies, I wish to be interred most humbly that can be, and that my body be interred in the place selected by my execu-
104 tor, the disposition of which after my interment and funeral I leave it to him for it to be done in such a way, as that is my wish.

I wish that they will say three masses for my soul and that there be given two reales at one time to each one of the forced bequests of this city, as that is my wish.

I give and bequeath to the Charity Hospital of this city One Hundred Dollars, which I instruct my testamentary executor shall be paid upon verification of my death. Such is my wish.

I declare that it is about seven years, more or less, since I contracted matrimony, according to the order of our Church, with a

negro slave of the Widow Deruisseaux, named Miguel, of which marriage there has been born no children whatsoever as appears.

I give and bequeath in the best form possible by this document to Nanita Ledidlf, free mulatto, my little daughter-in-law, One Hundred Dollars, with my six petticoats, with those of my use, together with all my jackets and two dozens of handkerchiefs, all of which I instruct my executor shall, upon verification of my death, be delivered to her, for such is my wish.

I give and bequeath to Veronica, free negro, in remuneration of the good services I have received from her, Fifty Dollars, which I instruct my executor, upon the verification of my death, shall be paid to her, for such is my wish.

105 I declare that I have as property belonging to me some houses situated in this city on St. Peter Street, bounded on one side by houses of Renato Brion and on the other side by other houses of the Cavalier Regidor Joseph Ducros, with two negroes named Juaneton, of age about fifty years; Rosetta, of about twenty-five, and Cipion, a negro, of about forty-five years, together with the curtains and furniture of my establishment, this in proof thereof.

I order and it is my wish that, after my death is verified, that their liberty be given to the negroes Juaneton and Rosetta and that, consequently, my testamentary executor shall execute the necessary writing for that purpose, for such is my wish.

I declare that the free negro, Pedro Mine Le Rioleta, owes me the amount of two hundred and fifty dollars, for which amount I have an acknowledgement thereof by him in my favor, which sum I order that my testamentary executor shall collect, for such is my wish.

I order, and it is my wish, that my referred to husband, slave of Mrs. Widow Deruisseaux, shall be given his liberty for the price of the estimation to be taken out of the total amount of my effects, praying that the Courts shall interpose its authoriy for his purpose and judicial decrees in the event that there is presented my testament, for such is my wish.

106 I declare that I have a contract with Don Joseph Cultia for the leasing of one part of my house under certain conditions, which I order shall be observed and complied with, and in conformity with what is established, and under the same terms and requirments that may be. If my heirs shall sell my house, I order, and it is my wish, that the said Cultia be given the preference.

And in order to carry out and pay this my testament, I name as testamentary executor and possessor of my effects the Cavalier Regisdor Don Joseph Ducros, in order that he may, upon my death, sell sufficient to pay my funeral and burial, and even though the year of my executor be passed, there shall be given him such additional time as he may need, as that is my wish. And of the remainder of my effects, rights and actions, I institute and name, by reason of not having any heirs, ascendants or descendants, as my sole and universal heir, the referred to Miguel, my husband, in order that, upon my death, he shall possess and inherit them with God's blessings and mine, as this is my wish.

I revoke and annul, and declare as null and of no value or effect whatsoever testament, codicils, or powers of attorney, or dispositions as testator, which previous to this one I might have made, either by word or in writing, as I do not wish them to be of any value, nor of any faith, either in Court or out of it, except this one, which, at present, I declare to be my last and final wish.

In this manner and in the form best recognized by the laws. Which testament is dated, in the City of New Orleans, on the third
107 day of the month of October, one thousand, seven hundred and eighty-two, and said declarant, I, Notary, do certify I know to be in the full enjoyment of her judgment, memory and understanding and will, which she so declared; and she does not sign because she does not know how, at her wish, it was signed by the witnesses.

(Signed) DN. ANTONIO DE ARGOTTE,
DR. JPH. CULTIA, AND
DN. PEDRO BERTONIERE,
Resident of This City, Present.

ANTO. ARGOTTE.
JOSEPH CULTIA.
PEDRO BERTONIERE.

Charges 32 Reales.

Before me,
LEONARDO MAZANGE,
Public Writer.

EXHIBIT.

(*Sale, Michel Desruisseau to Jacques Proffet.*)

Offered in Evidence by Counsel for Defendant.

Filed April 2, 1914.

Pardevant nous Narcisse Broutin Notaire public des etats unis de Lamerique en laville de la nouvelle Orleàns et des temoins ciapres nommès

Fut present Michel Desruisseau negre libre habitant de cette ville lequel nous a Declaré avoir aujourdhui vendu cedè transporté
108 des maintenant et à toujours et promet garantir de tous troubles dons dettes hipotheques èvictions substitution et autres empechement quel conques, au sieur Jacque Proffit dune part et au sieur thomas et David Urquhart de lautre part negotiants en cette ville à ce present et acceptans quatres arpands de terre fesant face au Bayou St. Jean à environ une lieu de distance du grand Pont sur la rive gauche en descendant et de quarante arpants de pro foundeur attenant d'un cotè au terre de la veuve Castillon et de lautre coté a terre du vendeur laquelle terre lui appartien pour l'avoir herité de sa defunt femme Magdelaine Nanete Ditts Lactef suivan

son testament en datte du trois Octobre mil sept cent quatrevingt deux passe par Devant Leonard Marange notaire public et la ditte Magdelaine Nanete pour lavoir acheté de la negresse Libre Mariane par acte au raport de Maitre Andres Almonaster en datte du quatorze May mil sept cent soisante et dix sept, pour par les dits sieur acquereur jouir et disposer de la ditte terre comme de chose à lui appartenante à commencer leur jouissance des ce jour la presente faite pour et moyennant le prix et somme de trois cent piastres gourdes que le vendeur à tout presentement recu comptant contè en notre presances et dont il est content et entien quitte et decharge les sieurs acquereurs moyenant quoi ils leurs transport tous droits de propriétè et autres quil à et peut avoir sur les dits quatre arpands de terre presentement vendu dont il sest demis et dessaisi au proffit des sieurs acquereurs leurs hoirs successeurs ou ayant causes vouamt pour cette fin le porteur des presentes.

109 Ainsi à ètè fait voulu et consentie entre les parties lesquels pour lexecution des presentes ont elu leur domicile en leur demeure susditte auquel lieu nonobstant &a promettant &a obligeant &a renoncant &a.

Fait et passè en la ville de la nouvelle Orlèans ce vingt cinq May mil huit cent quatre et la vingthuitieme annè de lindepandance des etats unis de Lamerique en presance des sieurs Francois Munhall, et Antoine Fromentin temoins Domiciliè en cette ville qui ont signè avec les acquereurs ayant declarè le vendeur ne savoir signè.

En foi de quoi nous dit notaire avons apposè notre seing et le sceau de notre office ce jour et an que dessus.

(Original Signe) JAS. PROFFIT.
T. D. URQUHART.

FRANS. MUNHALL.
FROMENTIN.

NARCISSE BROUTIN,
Not. Pub.

110 EXHIBIT.

(*Sale Jacques Proffett to Alexander Milne.*)

Offered in Evidence by Counsel for Defendant.

Filed April 2, 1914.

Vente de terre par sieur Jacques Proffit au sieur Alexander Mylne.

Pardevant nour Narcisse Broutin notaire public des Etats unis damèrique en la ville de la nouvelle orleans et les tèmoins ci après nommès.

Est comparu le Sieur Jacques Proffit propriètaire demeurant en cette vill.

Lequel a par ces prèsentes, vendu, cèdè et transportè des mainmant et à tojours et promet garantir de tous troubles, dettes, hypo-

teques, evictions et autres empêchmens generalement quelconques, au sieur alexandre mylne à ce prèsent et acceptant, acquereur pour lui ses hoirs ou ayans causes, une terre de deux arpens de face au Bayou St Jean, sur quarante arpens de profoundeur situèe à eviron une lieu de distance du grand pont sur la rive en desendant le dit Bayou St. Jean, attenant d'un cote au sieur Urquhart et de l'autre cote au sieur acquèreur. Laquelle terre appartient au sieur vendeur pour l'avoir acquise de michel Desruisseau negre libre par acte a notre rapport en date du vingt cinq mai mil huit cent quatre conjointement avec les sieurs thomas et David Urquhart qui possedent la même quantitè de deux arpens: pour par le sieur acquèreur jouir, faire et disposer des dits deux arpnes prèsentement vendus à compter de ce jour et comme bon lui semblera.

111 La prèsente vente faite pour et moyennant la somme de Dux cent piastres que le sieur vendeur reconnait avoir recu comptant, hors la vue de nous notaire, du dit sieur acquèreur au profit duquel il en consent bonnes et valables quitance et Dècharge, et au moyen duquel payment le dit sieur vendeur transporte au sieur acquèreur tous les droits de propriètè qu'il a et peut avoir sur les dits deux arpens de terre sus dèsignès et par lui vendus dont il lui consent toutes dessaisine, saisine. Dont acte: Car ainsi; promettant, obligeant renoncant &a.

Fait et passè à la nouvelle orleans en l'ètude de nous notaire le Dixseptieme jour du mois de juin de l'annèe mil huit cent sept et la trente unieme de l'indèpendance amèricaine, en prèsence des sieurs francois munhall et pierre francois simon godefroy tous deux tèmoins requis et domicilès en cette ville qui ont, ainsi que les comparans, signè avec nous notaire après lecture faite.

(Original Signe.)

ALEXr MILNE.

FRAs MUNHALL.
JAs PROFFIT.
CODEFROY.
NARCISSES BROUTIN,
Not. Pub.

112 EXHIBIT

(*Sale of Milne to Geo. Morgan.*)

Offered in Evidence by Counsel for Defendant.

Filed April 2, 1914.

Enregistre dans non Livre courant a la page 258.

* * * * * * *

12 Janvier 1805. Vente de terre, par Alexandre Milne, a Georg W. Morgan.

Par Devant nous Narcisse Broutin notaire public des Etats unis de Lamerique en la ville de la nouvelle Orlèans et des temoins ciapres nommès.

Fut present le sieur Alexandre Milne marchand en cette ville Lequel nous à Declarè avoir ce jourdhui vendu cede transportè dès maintenant et à tourjours et promet garantir de tous troubles dons dettes hipotèques èvictions substitution et autres empechement quelconques au sieur George W. Morgan à ce present et acceptant deux arpants de face au Bayou St. Jean et quarante de profondeur cituè à environ une lieue du Grand Pont sur la rive gauche en descendant attenant dun cotè aux terre des sieurs Jacques Proffit et Thomas et David Urquhart, et de làutre cotè aux terre du nègre libre Michel Desruisseau Laquelle terre lui appartient pour l'avoir acquise du dit negre Michel Desruisseau par acte au raport de nous, dit notaire en datte du vingt cinq mai mil huit cent quatre pour par let dit sieur acquèreur jouir et disposer de la ditte terre comme de chose a lui apartenante à commercer sa jouissance dês ce jour la pre-
118 sente faite pour et moyennant le prix et somme de trois cent piastres gourdes que le sieur vendeur declare avoir recu comptant comptè dont il se contente entien quitte et dicharge le sieur acquereur lui transportant tous droits de propriètè et autres quil à et peut avoir sur les dites deux arpands de terre presentement vendu dont il sest demis et desaisi au profit du sieur acquereur ses hoirs successeurs ou ayant causes voulant quil soit saisie par et ainsi quil appartiendra constituant pour cette fin le porteur des presentes, car ainsi à ètè fait voulu, et consenti entre les parties lesquels pour lexecution des presentes ont elu leur domicille en cette ville auquel lieu nonobstant, promettant, obligeant, renoncant &.

Fait et passe en la ville de la Nlle. Orleans ce douze Jeanvier mil huit cent cinq et la vingt neuvieme anne de lindepandance americaine en presance des sieurs francois Munhall, et Antoine fromentin temoins Domiciliè en cette ville qui ont signè avec les comparants.

En foi de quoi nous dit notaire avons apposè notre seing et le sceau de notre office ce jour et an que dessus.—un mot surchargè—bon.

(Original Signe.)

ALEXr MILNE.
GEORGE W. MORGAN.

ANTOINE FROMENTIN.
FRAs MUNHALL.
NARCISSES BROUTIN,
Not. Pub.

114 EXHIBIT.

(*Sale Geo. Morgan to Alex. Milne.*)

Offered in Evidence by Counsel for Defendant.

Filed April 2, 1914.

Par devant nous Narcisse Broutin notaire public des Etats unis Damerique en la ville de la nouvelle Orleans et des temoins ci-après nommès.

Fut present le sieur George Morgan negotiant domicilè en cette ville le quel nous à declarè avoir ce jourd'hui vendu cedè transportè des maintenant et à toujours et promet garantir de tous troubles dons dettes hipoteques evictions substitution et autre empechement quelconques au sieur Alexandre Milne à ce present et acceptant une terre de deux arpands de face sur quarante de profondeur cituè au Bayou St. Jean à environ une lieu du Grand Pon sur la rive gauche en desandant bornè dun cotè par les terres des sieurs Proffit et Urquhart et de l'autre cote au terre du negre libre Michel Desruisseau la même que le sieur vendeur a acquis du sieur acquereur par acte au report de nous dit notaire en datte du douze Janvier dernier la presente vente faite pour et moyennant le prix et somme de trois cent piastres gourdes que le sieur vendeur declare avoir recu comptant comptè dont il est satisfait entiente quitte et decharge lacquereur moyennant quoi il lui cede renonce et transporte tous droits de propriètè et autre quil à et peut avoir sur la ditte terre presentement vendu dont il sest demis et desesie au profit du sieur acquereur ses hoirs successeurs au ayant cause voulant quil soit

saisie par et ainsi quil appartiendra constituant pour cette

115 fin le porteur des presentes et pour lexecution de ce dessus mentionnê les parties contractantes ont elu leurs domicille en cete ville anquel lieu nonobstant, promettant, obligeant, renoncant &.

Fait et passê en la ville de la nouvelle Orleans ce vingt deux Octobre mil huit cent cinq et la trentieme anne de lindepandance Americaine en presance des sieurs Francois Munhall et Antoine Fromentin temoins Domicillê en cette ville qui ont signè avec les comparants et nous dit notaire ce jour et an que dessus.

(Original Signe) GEORGE W. MORGAN.
ALEXr MILNE.
NARCISSES BROUTON,
Not. Pub.

ANTOINE FROMENTIN.
FRAs MUNHALL.

EXHIBIT.

(*Sale, Marie Noyant to Michel Desrisseau.*)

Offered in Evidence by Counsel for Defendant.

Filed April 2, 1914.

Testament.

Aujourd'hui cinquiemè jour de Janvier de l'annêe mil huit cent cinq la vingt neuvième de l'indepèndance amèricaine, après midy.

Pardvant nous Pierre Pedesclaux, notaire public des Etats unis d'Amèrique à la nouvelle Orleans, capitale du territoire d'orlèans.

116 Furent prèsent Michel Duruisseau, nègre libre, natif de cette colonie, demeurant sur le chemin du Bayou St. Jean actuellement en cette ville, fils lègitime du nègre Louis et de la nègresse marianne tous deux dècèdès.

Et Marie Noyant, negresse libre, son àpouse, native de cette colonie, fille lègitime du negre Joseph et de la nègresse Jeanne, tous deux dècèdès.

Lesquels michel Duruisseau et Marie noyant nous dit et dèclarè etant saine, d'esprit, corps et entendement, qu'ils voulaient faire leur testament où act de dernière volontè, ètant in certaine de l'heure de la mort;

Ils ont dèclarè êtrenès dans la rèligion Catholique, apostolique et romaine, dans laquelle ils veulent vivre et mourir.

Ils ont dèclarè n'avoir d'enfans issue de leur mariage.

Le dit Michel Duruisseau a dèclarè avoir un enfant naturel, nommè Pierre, issue de la nègresse libre hypolite; Lequel Pierre est parti sans son consentement de cette colonie pour la france, auquel enfant il a donne trois cent piastres en argent, quelques animaux pour travailler et cent cinquante piastres pour payer ses dettes, lesquels biens par sa mauvaise conduite il a mangè et dissipè en se livrant aux vices.

Il a dèclarè pareillement ques ses biens consistent en deux arpens de terre avec sa Batiste sittuè sur le chemin Bayou, avec quatre
117 boeufs et une vache; laquelle terre lui appartient pour l'avoir acquise du sieur Latille, avant son mariage.

Plus en deux autres arpens de terre de face sittuèes de l'autre bord du Bayou St. Jean, lui appartemant pour l'avoir acquise de feu sieur Jung, la quelle terre il achetta pareillement avant son mariage.

Les biens de la ditte Marie Noyant consistent en cent piastres quelle apporta en argent lors de son mariage et en cent piastres en meubles, bijoux et linges:

Le dit Michel Duruisseau, malgrè sa mauvaise conduite et le dèreglement de la vie de son filslui donne et legue un terrein faisant partie des deux arpens sittuès sur le chemin du Bayou, avec la profondeur ordinaire d'un terrein pour par lui en jouir avec la

bènèdiction du ciel et la sienne; mais si son dit fils Pierre meur
avant lui, il veut et entend que le dit terrein appartient à sa femme
Le dit Michel Duruisseau et la ditte Marie Noyant, pour se prouve
et donner des preuves réciproques de leur amitiè et attachement, s
donnent l'un à l'autre tous leurs biens gènèralement quel conque
pour par le survivant jouir de tous les biens du prèdècède sans
qu'aucun tribunal puisse prendre connoissance des biens delaisses pa
le prèmourant et se nomment l'un et l'autre executrix testamentaire
Ils ont annullè et annullent tous autres testaments et codiciles
ce antèrieure vouant et entendant que ce lui-ci seul est sa pleine e
entière èxècution.

118 Fait et passè en notre ètude à la Nlle. Orleans les jour e
an que dessus en prèsence des sieurs Jean Paptiste Rameres
Joachim Lozano, Edmond Mèani, Joseph de Toca, et Francoi
Caiserguer, temoins a ce requis en presence desquels J'ai lù et relu
aux dits Michel Duruisseau, et Marie Noyant, le prèsent leur testa
ment dans lequel ils ont persister, declarant qu'il contenait toutes leur
volontes, et ont les dits testateurs declares ne le savoir et ont le
temoins signes en presence de nous notaire soussignè.

(Original Signe)

JEAN BAPte RAMEREZ.
JOAQm LOZANO.
A. MEANIE.
JOSEPH DE TOCA.
FRANCOIS CAISERGUER,
PIERRE PEDESCLAUX,
Nre.

EXHIBIT.

(*Sale, Succn. of Marie Michel to Peyre Ferry.*)

Offered in Evidence by Counsel for Defendant.

Filed April 2, 1914.

1er Decembre 1829 Vente de terre Sucon de Marie Michel o
autrement Marie Noyant a Le Peyre Ferry.

Aujourd' hui, le Premier jour du mois de Dècembre de de l'annè
mil-huit-cent-vingt-neuf et la cinquante-quatrième de l'Indèdenpanc
des Etats Unis d'Amèrique;

119 Par-devant Louis T. Caire, Notaire public dans et pour l
ville at paroisse de la Nouvelle Orlèans, dûment commissionn
et assermentè et en prèsence des tèmoins ci-après nommès et sou
signès;

Fut prèsent Mr. Alexandre Milne demeurant en cette ville curateu
de la succession de feu Marie Michel femme de couleur libre o
Marie Noyant ainis qu'elle est portèe, dans certains actes, ainsi qu
nous 1 (a dèclarè le Sieur comparant, lequel a exposè que le vin
neuf September dernier en vertu du dècret de l'honorable le Cou
des preuves dans et pour la ville et paroisse de la Nouvelle Orlèans

date du vingt Six Août dernier et àprès les publications voulues par la loi il a fait exposer en vente par le minstère de Mr. Charles Blache, dèputè Register des testamens certaines propriètè dèpendant de la Succession de la dite Marie Michel; à laquelle vente publique Mr. Louis Peyre Ferry comme plus offrant et dernier enchèrisseur se rendit adjudicataire pour la somme de cent quinze piastres payable comptant, d'un lot de terre situè sur la rive gauche du bayou St. John à environ une lieue de cette ville mesurant deux arpens de face sur quarante arpens de profondeur; ainsi que le tout appert due procès verbal d'adjudication, dont une copie dument certifiée par le dit Sieur Charles Blache est et demeure ci-annexée pour recours.

En consèquence le dit Sieur comparant, voulant donner au dit adjudicataire un titre en bonne et due forme a par les prèsentes vendu, cèdè, quittè et transportè, avec garantie de tous troubles, dons, dettes, hypothèques, èvictions, aliènations et autres empêchemens gènèralement quelconques.

120 Au dit Sieur Louis Peyre Ferry, demeurant en cette ville, ici prèsent et acceptant acquèreur pour lui ses hèritiers ou ayans cause, le dit lot de terre situè sur la rive gauche du Bayou St. Jean à environ une lieue de cette ville, mesurant deux arpens de face sur quarante arpens de profoundeur bornè d'un côte par le propriètè de Mr. Milne et de l'autre côtè par celle de Mayronne ou ayans cause, faisant partie des biens dèlaissès par la dite Marie Michel, lui appartenant de son vivant au moyen de la donation pour cause de mort que lui en fit Michel Duruisseau son mari nègre libre, ainsi qu'il apert d'un acte au rapport de Pierre Pedesclaux alors Notaire public en date du vingt cinq Janvier Mil-huit-cent-cinq, le dit Michel Duruisseau dèclarant dans la dite donation l'avoir achetè de Mr. Jung, Et le Sieur Ferry nous a dèclarè avoir ètè sur les lieux aboir vu le lot de terre cidessus dècrit en être content et n'en pas demander davantage.

La prèsente vente est faite aux terms de la dite adjudication pour et moyennant la somme de Cent quinze piastres, que le Sieur acquèreur hors la vue du Notaire et des tèmoins soussignès à bien et dûment payèe et comptèe au dit Sieur Milne es-dit mom et qualite que le reconnait et en consent par les prèsèntes bonne et valable quittance et dècharge.

Au moyen de ce qui prècède le Sieur Vendeur ès-qualitè met et subroge le Sieur acquèreur dans tous les droits de propriètè gènèralement quelconques, que la succession de la dite Marie Michel

121 ou autrement Marie Noyant avait ou pouvait avoir sur le lot de terre objet des presentes voulant et entendant qu'il en soit saisi et revetu pour en jouir, faire, user et disposer comme de chose lui appartenant des maintenant et à toujours.

D'après le certificat du conservateur des hypotheques en date du vingt neuf Septembre dernier annexè au proces verbal d'adjudication dèposè dans le Cour des preuves, il n'y a point d'hypotheque enregistrèe contre la dite Succession sur le lot de terre sus-decrit.

Donte acte. Fait et passè en l'ètude à la Nouvelle Orlèans les jour, mois et an que dessus, en prèsence de Charles Darcantel et Josè

Antonio Bermudez, tèmoins à ce requis et domiciliès en cette ville, qui ont signè avec les parties et moi Notaire après lecture faite.

(Original Signe)

La. P. FERRY.
ALEX. MILNE,
Sinor.

CHARLES DARCANTEL.
J. ANTo. BERMUDEZ.

LOUIS T. CAIRE,
Not. Pub.

122 EXHIBIT.

(*Sale of Ground, L. F. A. Peyre Ferry to Alexander Milne.*)

Offered in Evidence by Counsel for Defendant.

Filed April 2, 1914.

STATE OF LOUISIANA,
City of New Orleans:

No. 825.

Sale of Ground, L. F. A. Peyre Ferry to Alexander Milne.

14th December, 1829.

Be it known, That this day, the Fourteenth of the month of December, in the year One Thousand, Eight Hundred and Twenty-nine, and in the Fifty-Fourth Year of the Independence of the United States of America.

Before me, Louis T. Caire, Notary Public in and for the City and Parish of New Orleans, duly commissioned and sworn, and in presence of the witnesses hereinafter named and subscribed.

Personally came and appeared: Mr. Louis Francois Alexandre Peyre Ferry, residing in this city, who declared that for and in consideration of the sum of One Hundred and Thirty-five Dollars, to him in hand cash, well and truly paid, out of the sight of the undersigned notary and witnesses, by

Mr. Alexander Milne, residing also in this city, the receipt whereof he does hereby acknowledge and grant a full discharge and acquittance therefrom, he does by these presents grant, bargain, sell,
123 convey and set over with full guarantee from all troubles, liens, debts, mortgages, evictions, alienations and any incumbrance of whatsoever nature, unto said Alexander Milne, here present, and accepting purchases for him, his heirs and assigns, certain lot of ground situated on the left bank of the Bayou St. John at about a league from this city, measuring two arpents front on forty arpents in depth, bounded on one side by the property of the

purchaser, and on the other side by that of Mayronne or assigns, belonging to the vendor, by purchase made from said Alexander Milne, acting as curator of the estate of the late Marie Michel, a free woman of color, or otherwise Marie Nogant, per act passed before the undersigned notary on the First instant. which property has been adjudicated to said Ferry as the highest bidder at the Public Sale of said Succession by Mr. Charles Black, Deputy Register of Wills, on the twenty-ninth day of September, last past, of which lot of ground and title of property the purchaser says that he is fully satisfied and wants no other designation thereof. To have and to hold the said lot of ground unto the said Alexander Milne, his heirs and assigns, to their proper use and behoof forever, and the said Louis P. Ferry for himself and his heirs, the said lot of ground to the said purchaser, his heirs and assigns, shall and will warrant and forever defend against the lawful claims of all persons whomsoever by these *these* presents.

According to the certificate of the Recorder of Mortgages, bearing even date herewith, there are no mortgages recorded in
124 the name of Mr. Louis Francois Alexander Peyre Ferry on a lot of ground situated on the left bank of the Bayou St. John at about one league from this city, measuring two arpents front and Forty arpents depth, bounded on one side by Mr. Milne, and on the other side by M. Mayronne or assigns, but the general ones hereafter mentioned, to wit: the former in behalf of Mrs. Louise Chevalier, his wife, then a minor, resulting from their marriage contract passed before Marc Lafitte, then a notary, on the Seventeenth day of April, One Thousand, Eight Hundred and Twenty-Four, and the latter resulting from an act before the same notary, dated the Fifth day of July, One Thousand, Eight Hundred and Twenty-Four, by which said Ferry did acknowledge the receipt of the sum of one thousand, six hundred and eighty-one dollars, belonging to his wife, according to the said act and paid by Mrs. Louise Marie Elizabeth Rabouin, widow of Mr. Bertram Chevalier.

And also personally came and appeared Mrs. Louise Chevalier, the legitimate wife of the said Louis Francois Alexander Peyre Ferry, and by him duly and specially authorized and assisted, who, after the reading of the foregoing deed of sale made by the undersigned notary, declared and said that she approved of it and gives her full consent thereto, and Mrs. Ferry having also declared that she intended to renounce all the mortgages, rights and privileges she might have on the lot of ground presently sold she was duly and
125 amply informed by the undersigned notary that the law of this State give to the wife a general mortgage on all the property of her husband.

First. For the restitution of her dowry and for the reinvestment of the total property sold by her husband and which she brought in marriage resulting from the celebration of the marriage.

Second. For the restitution or reinvestment of the dotal property, which came to her after the marriage, either by succession or dona-

tion, from the day the succession was opened or the donation perfected.

Third. For the indemnification of the debts to which she bound herself jointly with her husband, as well as for the replacing of her hereditary effects alienated, from the day when such obligation or sale was executed.

Fourth. To secure the fulfillment of the obligation imposed on her husband in case he should have for his personal benefit enjoyed the paraphernal properties of his wife, or for the reimbursement of their price in case they should have been alienated by his wife and he should have received the price thereof.

Fifth. On the movable property of her husband, for the restitution of her dotal rights, and that she cannot lose the aforementioned rights and privileges without renouncing them, in the form prescribed by law.

And the said Mrs. Ferry, being well and amply informed of all the rights granted by law on the property of her husband, declared and said that she persists, notwithstanding, in her primitive
126 intention and she does hereby, of her own accord and free will, renounce in behalf of the said Alexander Milne, his heirs and assigns, all the rights and privileges of whatsoever nature given by the law of this State on the property aforementioned and sold by her husband, abandoning and transferring them unto the said Milne, his heirs and assigns, in order that he may use them in judicature and thereout, which renunciation has been accepted by the purchaser.

Done and passed in my office at the City of New Orleans, the day, month and year aforementioned, in presence of Charles Darcantel and Jose Antonio Bermuder, witnesses thereto required, and residing in this city, who have signed with parties and me, notary, after the reading of the act.

(Original Signed.)
L. P. FERRY.
ALEX. MILNE, SR.
LOUISE FERRY, NÉE CHEVALIER.

J. ANT BERMUDER.
CHARLES DARCANTEL.

LOUIS T. CAIRE,
Notary Public.

EXHIBIT.

(Sale, Michel Desruisseau to Milne.)

Offered in Evidence by Counsel for Defendant.

Filed April 2, 1914.

Par devant nous, Narcisse Broutin, Notaire Public des Etats Unis de l'Amerique en la ville de la Nouvelle Orleans et des temoins ci-apres nommee.

127 Fut present Michel Desruisseau negre libre habitant de cette ville lequel nous a Declare avoir aujourd'hui vendue, cede transporte des maintenant et a toujour et promet garantir de tous troubles dons dettes, hypotheques eviction substitution et autre empechement quelconque au sieur Alexandre Milne marchand en cette ville a ce present et acceptant deux arpents de terre de face au bayou St. Jean et quarante de profonduer citue a environ une lieu de grand pont sur la rive gauche en dessandant attenant d'un cotte au terre des Sieur Jacques Proffit et Thomas et David Urquhart et de lautre cottee au terre du vendeur les quelles deux arpents lui apartienne pour les avoirs herite de feu Magdelaine Nanette ditte Laclef sa femme suivant son testament passe par devant Maitre Marange notaire qu'a ete de cette ville en date de trois Octobre mil sept cent quatre vingt deux, et celle ci pour les avoir achete de la negresse libre Mariane par acte au raport de Maitre Almonaster en date du quartorze Mai mil sept cent soixante et dix sept pour par le dit Sieur acquereur jouir et disposer de ladite terre comme de chose a lui appartenante a commencer sa jouissance de ce jour la presante faite pour et moyennant le prix et somme de deux cent piastres gourds que le vendeur a tous presentement recu comptant compte en notre presence et dont il est content et en tien quitte et decharge le sieur acquereur lui transportant tous droits le propriete et autres qu'il a et peut avoir sur les dite deux arpents de terre presentement vendu dont il s'est demis et dessaisi au proffit du sieur acquereur ses hoirs successeurs ou ayant causes voulant qu'il soit saisie par et ainsi qu'il appartiendra, constituant pour cette fin le porteur des presantes.

128 Ainsi a ete fait voulu et consenti entre les parties les quel pour lexecution des presantes ont elu leur Domicile en cette ville auquel lieu nonobstant & a obligent &a promettant & a renoncant &a. Fait et pase en la ville de la Novelle Orleans ce Vingt May mil huit cent quatre et la vingt huitieme annee de l'Independence des Etats Unis de l'Amerique en presence du sieur Francois Munhall et Antoine Fromentin temoins domicile de cette ville qui ont signe avec lacquereur ne layant pas fait le vendeur parce quil a declare ne le savoir faire.

En foi de quoi nous dit notaire avons appose notre seing et le seeau de notre office ce jour et an que dessus.

(Original Signed) ALEX'N. MILNE.

FROMENTIN.
FRAN'S. MUNHALL.

[SEAL.] NARCISSE BROUTIN,
Not'y Pub'c.

129 EXHIBIT.

(*Sale of Property by Milne Asylum for Destitute Orphan Girls to New Orleans Land Company.*)

Offered in Evidence by Counsel for Defendant.

Filed April 2, 1914.

No. 55.

April 4, 1903.

Sale of Property by Milne Asylum for Destitute Orphan Girls t New Orleans Land Company.

UNITED STATES OF AMERICA,
State of Louisiana,
Parish of Orleans,
City of New Orleans:

Be It Known, That on this fourth day of the month of Apri in the year of our Lord one thousand, nine hundred and three, an of the Independence of the United States of America, the one hu dred and twenty-seventh;

Before me, W. Morgan Gurley, a Notary Public, duly commi sioned and qualified in and for this city and the Parish of Orlean therein residing, and in the presence of the witnesses hereinaft named and undersigned, personally came and appeared: Loui Louque, a resident of this city, of full age of majority, and Preside of the Milne Asylum for Destitute Orphan Girls, a corporation ganized under the laws of this State, by Act No. 3 of the Legislatu of 1839, and reorganized by proceedings in the Civil District Cou for the Parish of Orleans, No. 35,904 of the docket thereof,

130 December, 1902, and domiciled in this city, herein acti for said corporation under and by virtue of a resolution the Board of Directors thereof, dated January 12, 1903, a certifi copy of which said resolution is hereto attached.

Which said appearer, acting in his said capacity, as aforesa

declares that she does by these presents grant, bargain, sell, convey, transfer, assign, set over, abandon and deliver, with all legal warranties and full substitution and subrogation in and to all the rights and actions of warranty, which said vendor has or may have against all preceding owners and vendors, unto the New Orleans Land Company, a corporation organized under the laws of this State and domiciled in this city, herein represented by its president, Louis Pfister, here present accepting, and purchasing for itself and assigns and acknowledging due delivery and possession thereof, all and singular, the following described property, to-wit:

A certain tract of land, bounded by Bayou St. John, on which it measures six (6) arpents, more or less, by Milne Street, of the property lately belonging to the Canal Bank and now belonging to the purchaser, on the north by a line north of French Street, on which it measures forty (40) arpents, in depth more or less, on the south by a line south of Polk Street on which it measures forty (40) arpents in depth, more or less, as per sketch of Coleman and Maloche, hereto annexed. Said property being a part of the property described on a plan annexed to an act of partition between the four asylums, legatees of Alexander Milne, marked by the letter
131 "D," the other portion of said tract having been previously sold by the Milne Asylum for Destitute Orphan Girls by an act passed before Hugh Madden, Notary Public of this City, on September 4, 1863. Registered in the Conveyance Office of this parish, in Book 85, Folio 649.

Acquired by the said asylum as one of the four universal legatees of Alexander Milne, whose succession is now opened in the Civil District Court of this parish, No. 35,904, and also by the act of partition above referred to.

To have and to hold the above described property unto the said purchaser and assigns forever.

This sale is made and accepted for and in consideration of (200) two hundred shares of the capital stock of said New Orleans Land Company, full paid, which the said purchaser has well and truly delivered to the said present vendor, who hereby acknowledges the receipt thereof, and grants full acquittance and discharge therefor.

All State and city taxes up to and including the taxes due and exigible in 1902 are paid as per proper State and city tax researches annexed.

By reference to the certificates of the Register of Conveyances and Recorder of Mortgages in and for the Parish of Orleans, annexed hereto, it does not appear that said property has been heretofore alienated by the —— or that it is subject to any encumbrance whatever.

Except.

First. Transfer E. H. Durell and P. C. Wright, by act before A. Daurecourt, Notary, on March 22, 1853; registered in Con-
132 veyance Office in Book 60, Folio 509. The said vendor here declaring that the said contractors having failed under the

terms of the act, this alienation is null and void. Which statement is accepted by the purchaser.

Second. Abandonment to New Orleans Navigation Co., of a portion of above tract, for the purpose of widening Bayou St. John, and making a road; said portion measuring 17 25/100 superficial arpents by an act before A. Daurecourt, Notary, on May 7, 1853, and registered in the Conveyance Office in Book 62, Folio 15; and here the said vendor declared that the above described is no portion of the tract herein transferred, which statement is accepted by the purchaser.

Third. Transfer to J. A. D'Hemecourt, a portion of the herein described property by act before A. Daurecourt, Notary, on September 7, 1859; registered in the Conveyance Office in Book 79, Folio 299.

And here the said vendor declares that the transfer herein thirdly described is no portion of the tract herein sold and transferred. Which statement is accepted by the purchaser.

Fourth. Sale to Board of Commissioners, First Drainage District, by act before Hugh Madden, on September 10, 1863, registered in the Conveyance Office in Book 35, Folio 649. And here the said vendor declares that this title is now vested in the present pur-
133 chaser herein, which is admitted by the present purchaser.

Fifth. The sale to J. V. Maylie for taxes of 1895, 1896, 1897 and 1898, by act before G. Legardeur, Jr., Notary, on August 9, 1899; registered in Conveyance Office in Book 172, Folio 623.

And now appears and herein intervenes Mr. J. B. Maylie, a resident of this city, of full age, married but once and whose wife is now living with him in this city, who declares that he has taken full cognizance of the within and foregoing act of sale, and that he does hereby transfer, assign, set over, abandon and deliver and forever quit claim to the New Orleans Land Company any and all right, title, ownership or claim that he has in or to said property herein transferred, whether acquired by virtue of the herein described tax sale to him, or otherwise.

There appears on the mortgage certificate hereto attached the Drainage Privilege, which said vendor declares has been settled with the Board of Drainage Commissioners by the sale fourthly mentioned on the conveyance certificate, which was passed before Hugh Madden, Notary, on September 10, 1863.

Thus done and passed in my office at the City of New Orleans, on the day, month and year herein first above written, in the presence of Messieurs John T. Whitaker and John E. Huffman, com-
134 petent witnesses, who hereunto sign their names with the said appearers and me, notary, after reading of the whole.

(Original Signed) LOUISE LOUQUE,
Pres. Milne Asylum for Destitute Girls.
J. B. MAYLIE.
LOUIS PFISTER,
President N. O. Land Co.
JNO. T. WHITAKER.
JNO. E. HUFFMAN.

W. MORGAN GURLEY,
Notary Public.

A true copy:
[SEAL.] (Signed) W. MORGAN GURLEY,
Notary Public.

EXHIBIT.

(*Sale, Milne Asylum for Destitute Orphan Boys to New Orleans Land Company.*)

Offered in Evidence by Counsel for Defendant.

Filed April 2, 1914.

No. —.

Sale of Property by Milne Asylum for Destitute Orphan Boys to New Orleans Land Co.

UNITED STATES OF AMERICA,
State of Louisiana,
Parish of Orleans,
City of New Orleans:

April 4, 1908.

Be it known, That on this fourth day of the month of April, in the year of our Lord one thousand, nine hundred and three,
135 and of the Independence of the United States of America, the one hundred and twenty-seventh.

Before me, W. Morgan Gurley, a Notary Public, duly commissioned and qualified, in and for this city and the Parish of Orleans, therein residing, and in the presence of the witnesses hereafter named and undersigned:

Personally came and appeared, Charles Louque, a resident of this city, of full age of majority, and president of the Milne Asylum for Destitute Orphan Boys, a corporation organized under the laws of this State, by Act No. 3 of the Legislature of 1839, and reorganized by proceedings in the Civil District Court, for the Parish

of Orleans, No. 35,904 of the docket thereof, in December, 1902, and domiciled in this city, herein acting for said corporation under and by virtue of a resolution of the Board of Directors thereof, dated January 12, 1903, a certified copy of which said resolution is hereto attached.

Which said appearer, acting in his said capacity, as aforesaid, who declare-, that he does by these presents, grant, bargain, sell, convey, transfer, assign, set over, abandon and deliver, with all legal warranties and with full substitution and subrogation in and to all the rights and actions of warranty which said vendor has or may have against all preceding owners and vendors unto the New Orleans Land Company, a corporation organized under the laws of this State and domiciled in this city, herein represented by its presi-
136 dent, Louis Pfister, here present, accepting and purchasing for said company, heirs and assigns, and acknowledging due delivery and possession thereof, all and singular the following described property, to-wit:

A certain tract of land bounded by Bayou St. John, on which it measures six (6) arpents, more or less, on Milne Street, or the property lately belonging to the Canal Bank and now belonging to the purchaser on which it measures six arpents (6) more or less, and bounded on the north by a line north of Downs Street, on which it measures forty (40) arpents, more or less, and on the south of Twiggs Street, on which it measures forty (40) arpents, more or less, as per sketch of Coleman and Malochee, surveyors hereto annexed.

Said property being part of the property described on a plan annexed to an act of partition between the four asylums, legatees of Alexander Milne, and marked by the letter "C." The other portion of said tract having previously been sold by the Milne Asylum for Destitute Orphan Boys, by an act passed before Hugh Madden, a Notary Public of this city, on September 10, 1863; registered in the Conveyance Office of this parish in Book 85, Folio 649.

Acquired by the said asylum as one of the four universal legatees of Alexander Milne, whose succession is now open in the Civil District Court of this parish, under No. 33,904, and by the act of partition above referred to.

137 To have and to hold the above described property unto the said purchaser and assigns forever.

The sale is made and accepted and in consideration of (200) two hundred shares of capital stock of said New Orleans Land Company, which the said purchaser has well and truly delivered to the said present vendor, who hereby acknowledge the receipt thereof and grant full acquittance and discharge therefor.

All State and city taxes up to and including the taxes due and exigible in 1902 are paid as per or cancelled as per State and city tax researches hereto attached.

By reference to the certificates of the Register of Conveyances and Recorder of Mortgages in and for the Parish of Orleans, annexed hereunto, it does not appear that the said property has been heretofore alienated by the present vendor or that it is subject to any encumbrance whatever.

Except.

First. Transfer E. H. Durell and P. C. Wright, by act before A. Daurecourt, Notary, on March 22, 1853; registered in the Conveyance Office in Book 60, Folio 509. The said vendor here declaring that the said contractors having failed under the terms of the act, this alienation is null and void. Which statement is accepted by the purchaser.

Second. Abandonment to the New Orleans Navigation Co., of a portion of above tract for the purpose of widening Bayou St.
138 John, and making a road; said portion measuring 17 25/100 superficial arpents, by an act before A. Daurecourt, Notary, on May 7, 1853, registered in the Conveyance Office in Book 62, Folio 15. And here said vendor declared that the above described is no portion of the tract herein transferred, which statement is accepted by the purchaser.

Third. Transfer to J. A. D'Hemecourt, a portion of the herein described property by act before A. Daurecourt, Notary, on September 7, 1859, registered in the Conveyance Office, Book 79, Folio 299. And here said vendor declares that the transfer herein thirdly described is no portion of the tract herein sold and transferred, which statement is accepted by the purchaser.

Fourth. Sale to Board of Commissioners, First Drainage District, by act before Hugh Madden, Notary, on September 10, 1863; registered in the Conveyance Office in Book 85, Folio 649. And here said vendor declares that this title is now vested in the present purchaser herein, which is admitted by the present purchaser.

Fifth. The sale to J. B. Maylie for taxes of 1895, 1896, 1897 and 1898, by act before G. Le Gardeur, Jr., Notary, on August 9, 1899, registered in the Conveyance Office in Book 172, Folio 623.

And now appears and herein intervenes Mr. J. B. Maylie, a resident of this city, of full age, married but once and whose
139 wife is now living with him in this city, who declares that he has taken full cognizance of the within and foregoing act of sale, and that he does hereby transfer, assign, set over, abandon and deliver and forever quit claim to the New Orleans Land Company, any and all right, title, ownership or claim that he has in or to said property herein transferred, whether acquired by virtue of the herein described tax sale to him or otherwise.

There appears on the mortgage certificate hereto attached the Drainage Privilege, which said vendor declares has been settled with the Board of Drainage Commissioners by the sale fourthly mentioned in the conveyance certificate, which was passed before Hugh Madden, Notary, on September 10, 1863.

Thus done and passed, in my office, at the City of New Orleans, on the day, month and year herein first above written, in the presence of Messieurs John T. Whitaker and John E. Huffman, competent wit-

nesses, who hereunto sign their names with the said appearers and me, Notary, after reading of the whole.

(Original Signed) J. B. MAYLIE,
JOHN T. WHITAKER,
JOHN E. HUFFMAN,
LOUIS PFISTER,
President N. O. Land Co.
CHAS. LOUQUE,
Pres. Milne Asylum for Destitute Orphan Boys.

[SEAL.] W. MORGAN GURLEY,
Notary Public.

A true copy.
(Signed) W. MORGAN GURLEY,
Notary Public.

140 EXHIBIT.

(*Sale, Maria Chagne to Joseph Dupar.*)

Offered in Evidence by Counsel for Defendant.

Filed April 2, 1914.

Pierre Pedesclaux. 1799.

Page 739.

Venta.

La obligacion e hipoteca por ante mi con pha ese este dia Nuev Orleans 18 de Mayo 1801. Ante me doy fee Pedesclaux N. P.

Sepase que yo, Maria Chagne, negra libre, vecina de esta ciuda otorgo que venda realmente al Pardo libre Jose Dupard en est propia recinadan a saver, tres arpanes de tierra citua das en el Bay San Juan, lindado por un lado por tierras de la Senora Viuda de S Maxent, y por elotra por las de Michel Deruisseaux con el fondo conterminos que demarca el plan figurativo formado por el Agr mensor Rl. Don Carlos Trudeau, que he entregado al comprado para su enteligencia cuia tierra me pertenece por haver la comprad a Jose Chegne, habia veinte y siete anos por documento privado, la vendo contodas sus entradas y saliddas, vias y costumbu derechos y serridumbre por libre de grabamen, como le ce tifico el presente. Eso. Anatador en precio de ciento y cinquan pesos, que devere satisfacer me entermino de mas de la fha, mediant

lo qual me parto en la propriedad posesion viril, senorias

141 de mas aciones reales y personales que a dicha tierra teni que cedo y trasfero en el comprador y en quien su derecho causa hubiese, para que como propia la posea o enoyena a su valu tad, en virtud de esta Escra. que le otorgo en Senal de Real Entreg como lo que es visto haver adquirido la posesion sin otra prueba que lo relevo: Y me obligo al sameamiento de esta venta conto

forma en ano con mis bienes havidos y por haver, doy por inserta la clausula guarantifia y renuncio las leyes derechos y privilegios en mi favor con la general en forma.

Y estando presente yo el nominado Jose Dupard acepto eata escritura y recivo comprado las tres arpanes de tierra en las terminos que me han vendidas, de ellos me doy por entrego y otorgo formal recivo. Y me obligo a satisfacer y pargar d! has ciento y cinquanta pesos de plaso senalado llamante y sin playes, con las castos de la labranza.

Y para su reguridad sin que la general obligacion dones que lo especial, ni porel contrario, hipoteca especales y sena la mente la misma tierra que me ha vendido, que prometo no vender ni en manera alguna enogener pendiente esta obligacion, lo contrario no valga sea nielo, nopare dro. entereon ni otro poscecior que perjudique esta obligacion, y a la premera obligacion personal, bienes herides y por haver, doy por inserta la clausula gaurantifica y renuncio las leyes en mi favor con lo general en forma con cuia es fha. en esta ciudad en la Nueva Orleans, diez de Septembre en (1799) Mil sette cienas Noventa y nueve.

142 Yo el Escribano doy fee conozco a los otorgantes que no firmaron porque digaron no saver: A su nuego lo haciendo testigas que lo fueron.

(Signed) DON CELESTIN LAVERGNE.
DON STERN A ROVAY.
C. LAVERGNE.

Ante mi,
PEDOR PEDESCLAUX,
Escribano Public.

EXHIBIT.

(*Translation of Act from Maria Chagne to Joseph Dupar.*)

Offered in Evidence by Counsel for Defendant.

Filed January 4, 1915.

Pierre Pedesclaux. 1799.

Page 739.

Venta Real cancelled the obligation and mortgage before me of ate this date, New Orleans, May 18, 1801, before me, I certify.

PEDESCLAUX,
N. P.

Be it known that I, Maria Chagne, a free negro, a resident of this ity, declare that I truly sell unto the free mulatto, Jose Dupard, in his same neighborhood, to-wit: Three arpents of ground situated

on the Bayou St. John, bounded on one side by lands of Mrs.
143 Widow of St. Maxent, and on the other by those of Michel Deruisseaux, with a depth and terms shown on a figured plan made by the Royal Surveyor, Don Carlos Trudeau, which I have delivered to the purchaser for his information, which land belongs to me through purchase from Jose Chegne about twenty-seven years ago and under private signature; and I sold it with all its entrances and exits, ways, customs, rights and servitudes and free of encumbrances, as is certified to by the annotating Public Writer, for the price of one hundred and fifty pesos, which should be paid me within —— months from the date by virtue of which I part with the civil possession of the property, titles and all personal and real actions which I had in said land; that I cede and transfer to the purchaser, and in whomsoever his right and cause may be, in order that he may es his own, possess and alienate the same at his will by virtue of this instrument, which I execute as evidence of real delivery, wherein is also seen the acquisition of its poss-ession without other proof of which I relieve him. I obligate myself to guarantee this sale with all form as owner with my encumbered belongings and to that and I give as inserted the guaranteeing clause and renounce the laws, rights and privileges in my favor as required in legal form.

And I, the said mentioned Jose Dupard, being present, accept this writing and receive as purchased the three arpents of ground in the terms under which they are sold me and of which I acknowledge delivery and possession thereof. And I obligate myself to sat-
144 isfy and to pay the said one hundred and fifty pesos at the stated time, upon demand and without delays, together with the charges of the tillage. And to secure it without the general obligation being effected by the special obligation, nor to the contrary, I specially mortgage in proof thereof the same land which has been sold me, which I promise not to sell or in any manner whatsoever alienate pending this obligation, anything to the contrary being no value and null of my other possessor should effect this obligation and the first personal obligation and the encumbered rights present and future, I give as inserted the guaranteeing clause and I renounce in form the laws in my favor and the general ones. Done in this City of New Orleans, September 10, 1799.

I, the Public Writer, certify that I know the declarants and that they do not sign because they tell me they know not how. At their request it is done by the witnesses.

(Signed) CELESTINE LAVERGNE.
C. LAVERGNE.
FERNA PORAY.

Before me:
PEDRO PEDESCLAUX,
Public Writer.

STATE OF LOUISIANA,
Parish of Orleans:

I, the undersigned, Peter Stifft, Custodian of Notarial Records in and for the Parish of Orleans, and State of Louisiana, do hereby

certify that the above and foregoing is a true and correct copy
145 of the original on file and of record in my office.

Witness my hand and official seal, this 4th day of April, 1911.

[SEAL.] (Signed) PETER STIFFT,
Custodian of Notarial Records.

EXHIBIT.

(Sale, Joseph Dupar to Mrs. de Moran.)

Offered in Evidence by Counsel for Defendant.

Filed April 2, 1914.

Vente au compt.
P.

Aujourd'hui Vingt du mois de Mars de lannèe Dix Huit cent cinq, et de lindèpendance de lamerique la vingt neuvième avant midy.

Pardevant nous Pierre Pedesclaux notaire public des Etats Unis dAmerique a la nouvelle orlèans capitale du territoire d'Orleans et en presence des temoins soussignes.

Fut present en personne Joseph Dupare Mulatre libre, donticelles.

Lequel a par ces presentes vendu, cedè, quitè, transportè, delaissè, des maintenant et a toujours, avec promesse de faire jouir et garantie
de toutes evictions troubles, alienations hypohteque et gen-
146 erallement quelconque touts empechements, la non existance dhypothèque certifiée par nous notaire annotateur,

a Dame Marguerite Islets epouse de S. Vincent chevallier demorans de lui duement autorisèe a leffet des presents par acte a notre raport en date du onze fevrier dernier et separèe de bien avec lui, presente et acceptante pour elle les siens ses hoirs et ayant cause;

Une habitation situèe sur le Bayou St. Jean ayant trois arpents de face, sur quarante de profondeur avec les Batisses et etablissements qui sy trouvent ainsi qu'ils sy comportent y celle joygnant aux terres duf-Canon et a celle de michelle Desruisseau, conformeut au plan.

Appartenante cette terre au vendeur pour lavoir acquise de mariane Genier negresse libre, par acte a notre raport le dix Septembre mil sept cent quatre vingt dix neuf.

Cette vente ainsi faite du grè consentement et franche volontè des partie, et pour et moyenan la somme de Doude cent piastres gourdes qui ont en notre presence ètè comptèe, nombrès et numrèes au dit vendeur, qui les a retirès pardevant lui ainsi qu'il le reconait et pour raison du dit payement donne quittance finale pour quoi il se demis, et dèlaise de toute espece de propriètè sur la ditte terre en faveur de la ditte dame qui sen reconnait saisie et vetue et en possession pour dorenavant en jouir, disposer comme de chose a elle appartenante.

147 Et a l'instant et en presence de moi notaire et des tèmoins le vendeur a fait remise a la ditte dame acquèreur du plan figuratif des lieux et D'une expèdition de la vente a lui faite par mariane Genier desquels titres la ditte dame declare etre contente,

Car ainsi a ètè convenu et arretè entres les parties, non obstant &—voulant &—renonceant &—

Fait et passè en letude les jour et an susdits en presence de Jean Baptiste ramirez, Joachim lozano qui apres lecture ont signès avec la dame marguerite desislets femme Morans et nous notaire. Le vendeur a declarè ne savoir signer.

(Original Signe) MARGUERITTE DES ISLETS,
FEMME DEMORANT.

JOAQn LOZANO.
Jn Bte RAMIREZ.
PIERRE PEDESCLAUX, *N.*

148 EXHIBIT.

(*Conveyance Certificate.*)

Offered in Evidence by Counsel for Defendant.

Filed April 2, 1914.

STATE OF LOUISIANA,
Parish of Orleans:

Office of the Register of Conveyances.

E. P. Brandao, Register.

October 10, 1863.

Sale of Property by Shff. Par. Orleans.

Heirs of Charles D. Moran

to

The Board of Commissioners of First Drainage District.

By deed of sale executed by James D. Dunham, Notary, dated twenty-first July, 1863, signed in the presence of Charles Agaisse & Michel de Armas in confirmation of the adjudication made to the Board of Commissioners of the First Drainage District at the public sale made on the said 21st of July, 1863, by virtue of a writ of fieri facias to said Sheriff directed by the Hon: the 3rd District Court of New Orleans at the suit of the Commissioners of the First Drainage District v. Heirs of Charles D. Moran, No. 17,028 of the docket of said Court. The said Sheriff has sold to George Ingram in his capacity of President of the Board of Commissioners of the First

Drainage District, for account of said Board of Commissioners of the First Drainage District. The tract of land beginning at a point on Bayou St. John, on the south line of the lands belonging to Milne Asylum for destitute orphan girls, thence on Bayou St. John 575 feet 6 inches more or less, thence between parallel lines to
149 Milne Street, measuring on said street 575 feet, more or less, bounded as follows, to wit: On the North side of the lands Milne Asylum for destitute orphan girls, on the West by Milne Street, on the South by the lands of M. Moran, and on the East by the Bayou St. John. The whole as per plan by J. A. D'Hemecourt, surveyor, dated 30th of December, 1860, and deposited in the office of said Commissioners. That sale was made for the sum of twelve thousand, three hundred and fifty-two dollars 30 ($12,352.30). The purchaser being the plaintiffs retained in their hands the amount of their claim after paying costs the sum of $12,167.97, and paid cash the balance of adjudication $184.33, and said purchasers assumed the payment of all taxes due on said property.

Felix McCulloch, Regr.

New Orleans, October 10, 1863.

I, the undersigned, Register of Conveyances in and for the Parish of Orleans, State of Louisiana, do hereby certify that the above and foregoing is a true and correct copy of the inscription made in this office on October 10, 1863, in Book 85, Folio 641, New Orleans, February 16, 1910.

(Signed) W. E. CONNOLLEY,
Dy. Register of Conveyances.

Conveyance Office.

February 14, 1910.

Fee (60) Sixty cents. Received payment.

(Signed) W. E. CONNOLLEY, *Dy.*

150 Circuit Court of the United States, Eastern District of Louisiana.

In Equity.

No. 12008.

JAMES W. PEAKE

v.

THE CITY OF NEW ORLEANS.

Bill of Complaint.

Filed May 30, 1891.

To the Judges of the Circuit Court the United States for the Eastern District of Louisiana:

James Wallace Peake, of the City of New York, and a citizen of the State of New York, brings this, his bill, on his own behalf
151 as well as on behalf of all other parties holding obligations of the same nature and kind as your orator, or obligations that are susceptible of being reduced to the same nature and kind as your orator who may intervene for their interest herein and may contribute to the costs and expenses, and agree to pay their share of the counsel fees herein against the City of New Orleans, a municipal corporation of the State of Louisiana and a citizen of said State.

And thereupon your orator complains and says:

That, under act of the Legislature of the State of Louisiana, approved March 18, 1858, a scheme was provided for the drainage of certain portions of the Parishes of Orleans and Jefferson, through the instrumentality of certain drainage commissioners who were to levy certain taxes upon the territory described in the act, and which was to be divided into certain districts, and whose duties, powers and obligations are more fully set forth in said act, which is made part hereof.

And your orator further shows that thereafter further acts, supplementary and amendatory of the above act, was duly passed by said Legislature, to wit: Act No. 191 of March 17, 1859, and Act No. 57 of the year 1861, and Act No. 30 of 1871, all of which are made part hereof.

And your orator further shows that the commissioners provided for in said Act No. 165 of 1859 were duly appointed, qualified
152 and entered upon the discharge of the duties of their offices in the first and second drainage districts, levied assessments and instituted the proceedings thereon, called for by said acts, and procured the homologation of the assessment rolls called for by said

acts, and finally levied execution upon various pieces of property on said judgments of homologation aforesaid and bought in the same, and also took a surrender of various other pieces of property in satisfaction of the drainage taxes imposed thereon, but the exact details and description of which are unknown to your orator, and are fully and in detail known by the defendant, and all of which land so purchased by said commissioners, as well as that surrendered to them, was so bought and surrendered and held by them, under and pursuant to the acts of the Legislature aforesaid, and in trust for the creditors of the drainage fund by said acts of the Legislature of the State of Louisiana created.

Your orator further shows that pursuant to Act 30 of 1871, hereto annexed as aforesaid, all the rights, duties, obligations and property of the aforesaid drainage commissioners passed from them to the City of New Orleans, and said act, among other things, directed that all property received by said City of New Orleans should be held in trust for the payment of the Mississippi and Mexican Gulf Canal Company, which was the contractor provided by said act to do the drainage work therein provided for.

53 And your orator further shows, that among the property that passed under the above act, in trust as aforesaid, to the said City of New Orleans, as aforesaid, were a great number of squares of land, situated in the rear of the City of New Orleans, and bordering on Lake Pontchartrain, bounded by said lake, Upperline Canal, Metairie Ridge, Gentilly Ridge and Peoples Avenue Canal.

Your orator further shows, that he is the owner of a certain judgment, based on three drainage warrants issued under Act 30 of 1871, for drainage work done under said act, all dated July 9, 1875, and numbered Nos. 115, 116 and 122, with interest at 8 per cent per annum, from date until paid, which was duly rendered on May 9, 1887, in suit No. 10,810 on the docket of this Court, payable out of drainage funds, on which execution has been duly issued and returned nulla bona after due demand, as will more fully appear by reference to said suit, judgment, execution and return, all made part hereof.

Your orator further shows, that although said City of New Orleans received said canals and property from said drainage commissioners in the year 1871, she has never sold or disposed of them, but still holds the same and declines and refuses to pay your orator and the other creditors of said drainage —, or to take any steps for the collection of the drainage taxes, or otherwise to pay the debts due for drainage, or wind up or execute said trust.

And your orator further shows that a receiver is necessary and proper to take charge of all the property and assets belonging to said trust, and sell and dispose of the same for the benefit of the creditors thereof.

54 To the end therefore, that the trust created by Act 30 of 1871, and the other acts of the Legislature of the State of Louisiana, hereinbefore referred to, may be closed up and all the assets and property thereof may be sold, and the proceeds of sale be applied to the payment of the creditors of said fund; may it please

your Honors to appoint a receiver to take possession and charge of all the property and assets of every nature and kind, real, personal or mixed, now held and possessed by said City of New Orleans, under and pursuant to said Acts of the Legislature of the State of Louisiana, to-wit: Act No. 165 of 1859, No. 191 of 1859, No. 57 of 1861, and Act No. 30 of 1871, and under the direction of the Court, to sell and dispose of the same and apply the proceeds of said sale to the payment of the creditors of said drainage fund, and may it further please your Honors, to grant your orator a writ of subpœna, directed to the City of New Orleans, therein and thereby commanding said city on a day certain therein to be named and under a certain penalty, to be and appear before this Honorable Court, then and there to answer, but without — which is waived, all and singular the premises, and to stand, to perform and abide such order, direction and decree as may be *mete* and agreeable to equity and good conscience; and your orator, as in duty bound, will ever pray.

(Signed) RICHARD DE GRAY,
CHARLES LOUQUE,
Solicitors for Complainant.

155 Richard De Gray, being duly sworn, deposes and says that the complainant is not in the City of New Orleans or within the jurisdiction of the Court, to his knowledge; and that all the matters and things set forth in the foregoing bill of complaint are true to the best of his knowledge, information and belief.

(Signed) RICHARD DE GRAY.

Sworn and subscribed to before me, this 30th day of May, 1891.
(Signed) E. R. HUNT,
Clerk.

Order.

Let the City of New Orleans show cause on Monday, the 1st day of June, 1891, at 11 o'clock a. m., why a receiver should not be appointed herein, as prayed for.
New Orleans, May 30th, 1891.
(Signed) EDWARD C. BILLINGS,
Judge.

Submission of Rule for Receiver.

This cause came on this day to be heard upon the application of the complainant for the appointment of a receiver herein, to have the trust property sold.
Present: Charles Louque, of counsel for complainant; Carleton Hunt, City Attorney, for defendant, whereupon, by consent, the matter was submitted to the Court.

156 *Submission of Rule and Answer.*

Filed June 13, 1891.

No. 12008.

JAMES WALLACE PEAKE

v.

CITY OF NEW ORLEANS.

Now comes into Court the City of New Orleans, and conforming to the directions of the City Council of date June 9, 1891, submits to the Court the rule heretofore herein taken on the city.

(Signed) HY. RENSHAW,
Asst. City Attorney;
CARLETON HUNT,
City Attorney,
Solicitors for Defendant.

No. 12008.

J. W. PEAKE

v.

CITY OF NEW ORLEANS.

The motion for the appointment of a receiver in this cause having come on to be heard, and the solicitors for the respective parties having been heard thereon, now, on motion of Charles Louque, solicitor for the complainant, it is ordered by the Court, the Hon. E. C. Billings, presiding, that J. W. Gurley be, and he is hereby appointed receiver of all the property, equitable interests,
157 things in action and effects of the drainage fund, held by the defendant, the City of New Orleans, in trust, and vested with all the rights and powers of a receiver in chancery, according to law and the rules and practice of this Court, upon his filing with the Clerk of this Court a bond for the faithful performance of his duties as such receiver, in the penal sum of $2,000.00, and the approval thereof by this Court.

And it is further ordered, that the said defendant appear before A. G. Brice, Esq., master in chancery of this Court, at such time or times and place as he may designate, and execute and deliver to said receiver, an assignment, assigning, transferring and conveying to him all the aforesaid property, equitable interests, things in action and effects, and all books, papers and vouchers relating thereto, and that the city appear before such master, from time to time, as said master shall require, and submit to such examination as said master shall direct in relation to the said property and effects, and the condition thereof.

And the said complainant or the said receiver shall be at liberty to apply to the Court, from time to time, for such further order or direction as may be necessary.

June 13, 1891.

(Signed) EDWARD C. BILLINGS,
Judge.

158 *Answer.*

Filed November 26, 1892.

No. 12008.

J. W. PEAKE

v.

CITY OF NEW ORLEANS.

This defendant, now and at all times hereafter, saving and reserving to itself all and all manner and benefit and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material for it to make answer thereto, answering, says:

That in 1858, the Legislature of the State of Louisiana passed an act, No. 165, approved March 18th, 1858, entitled "An Act to provide for the leveeing, draining and reclaiming swamp lands in certain portions of the parishes of Orleans and Jefferson."

That thereafter the Legislature of the State of Louisiana passed the following acts, duly approved, namely: Act No. 191 of 1859, Act No. 57 of 1861, and Act No. 30 of 1871, for the purposes in the said acts set forth.

That assuming to act by authority of Act No. 165 of 1858, and of the other acts just enumerated, the commissioners thereunder pro-
vided for proceeded to lay assessments and levy drainage
159 taxes, and failing to collect the same, to sell certain property in the drainage districts, and that if title to the same was duly acquired by the commissioners and their successors, it passed in turn to the City of New Orleans in the capacity of statutory trustee, by the proper officers of the city; and respondent makes part of its answer the several acts herein referred to.

And respondent further shows that in the case of the Succession of Irwin, 33 Louisiana Annual Reports, page 63, the Supreme Court of Louisiana held Act 30 of 1871 to be unconstitutional as to the fourth drainage district, and the assessments themselves to be null and void; and so, too, it was held by the Supreme Court of Louisiana, to the like effect, in the matter of the Board of Administrators, praying, etc., 34 Louisiana Annual Reports, page 97. And respondent further shows that in accordance with the decision in the Irwin case, it was likewise held by the Supreme Court of Louisiana, in the case of State ex rel. the Mississippi and Mexican Gulf Ship

Canal Co. v. the City of New Orleans, et als., 35 Louisiana Annual Reports, page 68, that the City of New Orleans was not liable for assessments, and judgments therefor, claimed to have been rendered under and in conformity to said Acts 57 of 1861 and 30 of 1871.

And respondent further shows that the ratio decidendi of the Supreme Court of Louisiana in the Irwin case is of direct application to and must control in the cases of all the drainage districts; and particularly the First, Second and Third Drainage Districts; that Act 57 of 1861 is unconstitutional for like objections thereto
160 with those maintained by the Supreme Court of Louisiana in the Irwin case; and that this Court will follow the same decisions, as being the interpretation of the statutory law of Louisiana by the highest Court of the State. And respondent further shows that Act 57 of 1861 is repugnant to and in violation of Article 115 of the Constitution of Louisiana of 1852, and the proceedings thereunder, and by which certain property was seized under execution, sold, and bought in by the drainage commissioners, or otherwise surrendered to the drainage commissioners, were null and void.

And respondent further shows that in the case of Davidson v. The City of New Orleans, 34 Louisiana Annual Reports, page 176, the Supreme Court of Louisiana held that where drainage works are shown not to have benefited the lands assessed, the assessment against them is uncollectable and null. And respondent further shows that the doctrine of the Supreme Court of Louisiana in the Davidson case is applicable to and ought to control in the greater part of the first and third districts, and almost the whole of the second district. That the drainage works have been abandoned, and benefit to the property proposed cannot be seen and traced, and in the presence of the facts it is against good conscience and equity to enforce the judgments based upon said assessments.

Respondent further shows that Act 51, of 1869, was intended to repeal, and actually did repeal Act 57, of 1861, and for this reason, additional to those already assigned by respondent, proceed-
161 ings under said Act 57 of 1861, after the passage and approval of Act 51 of 1869, were null and void, and it was not competent by means of such proceedings to convey title.

And respondent further shows that under none of the acts hereinbefore mentioned was any authority conferred on the Board of Commissioners or on the Board of Administrators to assess the City of New Orleans on its streets and public places, and that all assessments for drainage against said city, on its streets and public property, were null and void, and that it is not competent to make any conveyance of property based upon said assessments and upon said proceedings, and that if any such have been made that the same are null and void.

But respondent further shows that if the Court should, notwithstanding the premises, hold that any part or parts of the land pretended and assumed to be designated in complainant's bill of complaint, passed to respondent, then respondent shows that the same did so pass to respondent only in respondent's fiduciary character

as statutory trustee of the drainage fund, involuntarily burdened therewith, and that respondent can be dealt with herein, and treated by the complainant in no other capacity whatsoever.

And further answering, respondent shows that complainant's bill of complaint, where it sets forth that among the property that passed under the acts of the Legislature hereinbefore recited, were a great number of squares of land situated in the rear of the City
162 of New Orleans and bordering on Lake Pontchartrain, bounded by said lake, Upperline Canal, Metaire Ridge, Gentilly Ridge and People's Avenue Canal, furnishes no description whatsoever of the lands in question, and respondent further shows that all transfers of land are of public record, and are accessible to the complainant, and that when he lays claim, as he does in these proceedings, charging, as he also does, that respondent is compellable to transfer title to the said lands to the receiver herein, complainant is clearly bound to furnish particulars with reference to said lands and a due description thereof, and to point out where they are situated, and what the measurements thereof may be, and otherwise give respondent such information and notice in relation thereto as may suffice to put respondent upon its proper defense.

And, further answering, respondent admits that on May 9, 1887, complainant in suit No. 10010 of the docket of this Court, obtained judgment based upon drainage warrants, for six thousand dollars, with eight per cent interest thereon from July 9, 1875, and costs of suit, payable out of said drainage fund, and that execution issued thereon, which was returnable nulla bona, as appears by reference to said judgment, execution and return.

And, further answering, respondent denies that the City of New Orleans ever received lands except by the transfer of such title as the drainage commissioners had, which has been declared null by the Supreme Court of Louisiana, and shows that the said City of New Orleans has done all in its power to collect the drainage
163 taxes, and discharge its duties under the legislation hereinbefore recited, but that said collection has been made impracticable by the said decision of the Supreme Court of Louisiana, and respondent discharged from all responsibility in the premises by the decisions and by the decision of the Supreme Court of the United States in Penke v. City of New Orleans, reported in 139 U. S. Reports, pages 349 to 361.

Further answering, respondent shows that upon the application by complainant to this Court for the appointment of a receiver, as in complainant's said bill of complaint is more fully set forth, the mayor and council of the City of New Orleans, resolved on the 9th of June, 1891, that they deemed it unadvisable that the city should petition this Court for the administration and liquidation of the drainage fund, and suggested that the city attorney be instructed to that end.

And respondent further shows that upon a rule taken herein, the Court appointed J. W. Gurley, Esq., receiver, and that said Gurley has qualified under said appointment, and that respondent has never opposed and does not now oppose his entering upon the discharge

of his duty as receiver, but only requires that his gestion in office should be confined to the trust property, if any there is, resulting from the drainage trust, and none other, and that the said receiver should not take and possess the same in detriment to, and destruction of respondent's rights as a creditor of the drainage fund
164 as determined by the U. S. Supreme Court in the case of Peake v. City, reported in 139 U. S. Reports, pages 249 to 351.

Further answering, respondent shows that the City of New Orleans advanced $1,600,000 to the drainage fund, in bonds of the city, and is a creditor of the drainage fund for hundreds of thousand of dollars, as appears by reference to the decision of the Supreme Court of the United States in the said case of Peake v. City of New Orleans, being the same parties now before the Court, and which decision and opinion of the Supreme Court of the United States is made part of this answer, and respondent hopes it may have the benefit of said decision now and at all times, as if it had availed itself thereof in the form of a plea; and respondent shows that it is entitled to hold all the assets and property acquired by it under the legislation hereinabove referred to, if any there are, until the amount of this indebtedness, which was incurred for the benefit of said drainage fund, shall be returned to the city, and respondent shows that it has a lien upon the said assets and property wherever the same may be found, and that respondent ought not to be compelled to deliver said assets and property, if any there are, until the disbursements so made by respondent for the benefit of the drainage fund shall be repaid, and that no conveyance to the receiver ought to be ordered by the Court until respondent has been reimbursed the amounts so paid out by it, as aforesaid.

But should the Court hold otherwise, and decree that respondent ought to deliver to the receiver the said assets and property,
165 then respondent prays that the decree directing the said delivery may reserve all of the respondent's rights, and that respondent be recognized as a preferred creditor of the drainage fund for the amount of $800,000.00, or whatever other amount in excess thereof may be shown due to your respondent by said fund, with first lien and privilege and right of pledge in favor of respondent upon the said fund and moneys realized and to be realized from debts due the same.

And this respondent denies all and all manner of unlawful combination or confederacy, wherewith it is by the said bill charged, without this, that there is any other matter, cause, or thing in the complainant's said bill of complaint contained, material or necessary for this respondent to make answer unto, and not herein well and sufficiently answered, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is willing and ready to aver, maintain and prove as the Court shall direct; and this defendant being a municipal corporation, makes this its said answer under its corporate seal with the attest of said seal, and the mayor of said city of New Orleans, keeper of said seal, as witness the impress of said seal, and the signature of Joseph A. Shakspeare, mayor of the City of New Orleans; and

humbly prays to be hence dismissed, with reasonable costs and charges in this behalf most wrongfully sustained.

[SEAL.] (Signed) JOS. A. SHAKSPEARE,
(Signed) HY. RENSHAW,
Asst. City Atty., Solicitor for Respondent.
CARLETON HUNT,
City Atty., Solicitor for Respondent.

166 *Answer of Joseph A. Shakspeare, Mayor, to Rule.*

Filed Nov. 28, 1891.

No. 12008.

JAMES W. PEAKE

vs.

CITY OF NEW ORLEANS.

Now into this Honorable Court comes Joseph A. Shakspeare, Mayor of the City of New Orleans who, for answer to the rule herein taken against him on November 24, 1891, says:

That he disclaims, now and at all times, any purpose or intention to be disrespectful to this Court, or to disregard or obstruct any order or judgment it may have rendered in this case, and represents to the Court his readiness to comply now and at all times with the orders of the Court, and especially with the orders hereinbefore rendered. And respondent represents that all and singular his acts have been by advice of counsel, and in order to protect the public interests entrusted to him, as Mayor of the City of New Orleans, and that he invokes the authority of the Court for the protection of the city.

Further answering, this respondent shows that it is the duty of complainant, or of the receiver appointed in this case, to describe particularly what are the effects and property of the drainage fund which are claimed by complainant or receiver to belong to the
167 drainage fund, and delivery of which it is sought to compel from the City of New Orleans; that neither the bill of complaint in this case, nor the order of the Court appointing the receiver, gives such description as is necessary for the proper identification of the property and for the protection of the City of New Orleans; that so far as respondent is informed, no demand, giving essential particulars of description, has as yet been made upon the City of New Orleans for the property and effects, if any there be, of the drainage fund, and no deed of assignment or conveyance purporting to describe said property and effects, been tendered to the city for compliance therewith. That as respondent is advised, transfers of land are matters of public record, and that complainant or the receiver may and should ascertain therefrom the description of

the property, delivery of which this proceeding seeks to enforce from the city.

And this respondent, further answering, says: That he is informed that under the following acts of the Legislature of Louisiana: 165 of 1858, 191 of 1859, 57 of 1861 and 30 of 1871, the drainage commissioners thereunder provided, proceeded to lay assessments and levy drainage taxes and to sell property for unpaid drainage assessments, and that if any title to such property was acquired under said proceedings by said commissioners, it passed in turn to the City of New Orleans as statutory trustee, by the proper officers of the city, but respondent avers that he is advised that, as set up by the City
168 of New Orleans in its answer to the bill of complaint in his case, title was not so acquired, for the reasons and upon the authorities set forth in the city's said answer, and respondent refers thereto and prays to be permitted to adopt and make part of this answer, as if herein repeated, the said answer of the city, setting forth the reasons in law and equity why the proceedings under the legislation mentioned in said answer are null and no foundation for title.

And, further answering, this respondent shows that J. W. Gurley, Esq., having been appointed receiver herein, the City of New Orleans has not opposed, and does not now oppose the entering upon the discharge of his duty of the said receiver, but that the city only requires that his gestion in office should be confined to the trust property, if any there is, resulting from the drainage trust, and none other, and that said receiver should not take and possess the same in detriment to and destruction of the right of the City of New Orleans as a creditor of the drainage fund, as determined by the Supreme Court of the United States in the case of Peake v. The City of New Orleans, 139 U. S. Reports, pages 349 to 361.

And, further answering, this respondent shows that the City of New Orleans advanced $1,600,000 to the drainage fund in bonds of the city, and is a creditor of the drainage funds for hundreds of thousands of dollars, as appears by reference to the decision of the Supreme Court of the United States in the said case of Peake v.
169 The City of New Orleans, which decision and opinion of the Supreme Court of the United States is made part of this answer; and respondent shows that the City of New Orleans is entitled to hold all the assets and property which may constitute the drainage fund, if any assets and property there are, until the amount of this indebtedness, which was incurred for the benefit of said drainage fund, shall be returned to the city, and respondent claims that the City of New Orleans has a lien upon said assets and property wherever the same may be found, and that the City of New Orleans ought not to be compelled to deliver said assets and property, if any there are, until the disbursement so made by the City of New Orleans for the benefit of the drainage fund shall be repaid, and that no conveyance to the receiver ought to be ordered by the Court until the City of New Orleans has been reimbursed the amounts so paid out by it as aforesaid.

Wherefore, respondents prays that the rule herein taken again
him may be dismissed.

But should the Court hold otherwise, and order that the City
New Orleans ought to deliver to the receiver said assets and propert
then respondent prays that the order or decree directing said deliver
may reserve all of the rights of the City of New Orleans as set fort
and prayed for in the answer of the City of New Orleans to the bi
of complaint herein.

And this respondent prays that this Honorable Court will gra
such further order and relief as it may deem appropriate f
170 the protection of the rights of the City of New Orleans.

(Signed) JOS. A. SHAKSPEARE,
Mayor.

Sworn to and subscribed before me this 29th day of Novembe
1891.

[L. S.] (Signed) CHAS. H. SHIELDS,
Not. Pub.

Hearing and Continuance of Rule and Order to Amend.

Extract from the Minute Book, November 28, 1891.

No. 12008.

JAMES W. PEAKE

vs.

CITY OF NEW ORLEANS.

This cause came on to be heard on the rule to turn over the ass
of the drainage fund to the receiver, when, after hearing the answ
of defendant,

It is ordered that said rule be continued to next Saturday, the 5
of December, 1891, at 11 o'clock A. M., and that plaintiffs in ru
be permitted to amend the same by giving a description of th
property claimed to be transferred by defendant to said receiver.

171 *Amended Rule.*

Extract from the Minute Book, November 28, 1891.

No. 12008.

JAMES W. PEAKE

vs.

CITY OF NEW ORLEANS.

On motion of R. De Gray and Charles L[illegible]que, solicitors for co
plainant, and J. W. Gurley, receiver herein, and on suggesting

the Court that in obedience to the order herein rendered to amend the rule to turn over the assets of the drainage fund to the receiver, so as to describe the property sought to be turned over, now aver that the said property is described in the inventory taken by Jos. W. Taylor, city notary, and is hereto annexed and made part hereof.

It is therefore ordered that the Mayor of the City of New Orleans show cause on Saturday, the 5th of December, 1891, at 11 o'clock A. M., why he should not turn over and execute a regular assignment to the receiver herein, the property described in the inventory hereto annexed, reserving to the complainant the right to apply for further orders in case other property be found, or be punished for contempt.

Copy of inventory of property of the drainage districts, referred to in supplemental rule and filed November 28th, 1891.

172 STATE OF LOUISIANA,
Parish of Orleans,
City of New Orleans:

Be it known, that on the eighteenth day of November, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States of America the one hundred and sixteenth,

I, Joseph Dewey Taylor, a notary public in and for the Parish of Orleans, and official notary of the City of New Orleans, did at the request of the Honorable Otto Thoman, comptroller of the City of New Orleans, make a descriptive inventory of all property, movable and immovable, belonging or appertaining to the several drainage districts of the City of New Orleans, as the same was pointed out to me by Mr. Louis Laroque, of this city, all of said movable property hereinafter described being situated, in part of the office of said city comptroller of the City of New Orleans, which property is described as follows, to wit:

Movable, Books, Papers, etc., First Drainage District.

* * * * * * *

The following real estate situated in this city and described as follows, to wit:

First. Charles D. Moran to the Board of Commissioners of the First Draining District, before James E. Dunham, sheriff, dated 21st of July, 1863, at public sale made on the 21st July, 1863, and by virtue of a writ of fieri facias to said sheriff directed by the Honorable the Third District Court of New Orleans, at the
173 suit of the Commissioners of the First Draining District v. Heirs of Charles D. Moran, No. 17,028 of the docket of said Court, the sheriff sold to George Ingraham, in his capacity of president of the Board of Commissioners of the First Draining District, for account of said board, the tract of land beginning at a point on the Bayou St. John, on the south line of the lands belonging to the

Milne Asylum of the Destitute Orphan Girls; thence on the Bayou St. John, 575 feet, 6 inches, more or less; thence between parallel lines to Milne Street, measuring on said street 575 feet, more or less, bounded as follows, to wit:

On the North side by the lands of the Milne Asylum for Destitute Orphan Girls, on the west by Milne Street, on the south by the lands of M. Moran, on the east by the Bayou St. John, the whole as per plan of J. A. D'Hemecourt, surveyor, dated 30th December, 1860, and deposited in the office of said board of commissioners. This sale was made for the sum of $12,352.30-100, the purchasers being the plaintiffs, retained in their hands the amount of their claim, after paying costs, the sum of $12,167.97; and said purchasers assumed the payment of all taxes due on said property. Registered in conveyance office in book 85, fo. 641,

Which said above tract of land being the following squares, as per books of plans by J. A. D'Hemecourt, surveyor, dated January 2d, 1861, and deposited in the office of the Board of Commissioners of the First Draining District, and now in the City Hall.

174 First. The greater portion of 23 squares of ground, Nos. 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, and 987, designated in each square as lot No. 2, and having each a front on Gaines Street, and each a depth towards Harney Street of 230 feet, 8 inches and 7 lines.

Second. The greater portion of 11 squares of ground, Nos. 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001 and 1002, designated in each square as lot No. 1, and having each a front on Gaines Street, and each a depth of 284 feet, 9 inches and 2 lines towards Polk Avenue.

Third. The greater portion of 12 squares of ground, Nos. 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013 and 1014, designated in each square as lot No. 2, and having each a front on Gaines Street, and each a depth of 284 feet, 9 inches and 2 lines towards Polk Avenue.

Milne Asylum for Destitute Orphan Girls.—By notarial act before Hugh Madden, notary public, dated September 10th, 1863, Mrs. E. Buisson, president of the Milne Asylum for Destitute Orphan Girls, sells unto the Board of Commissioners of the First Drainage District, represented by George Ingraham, certain squares and parts of squares of ground, according to a plan by Wrotnoski, surveyor, being in the rear of the City of New Orleans, as follows, to wit:

175 First. Certain portions of each of the 23 squares of ground which are designated by the Nos. 992 to 1014, both inclusive, which portion of each 23 squares of ground being taken from the north side of each said squares fronting on Polk Street, and measuring 7 feet, 2 inches and 2 lines on the Bayou St. John, the same front on Milne Street and between parallel lines, through each of said squares from said bayou to Milne Street.

Second. The north half of certain other squares of ground designated on said plan by the Nos. 1067 to 1089, both inclusive, the said half of said square No. 1067 fronting 148 feet, more or less, on the Bayou St. John, and thence along the southern boundary of all of said half square between parallel lines to Milne Street, upon which said half square 1089 fronts 146 feet, more or less, and all of which said half squares are bounded on the north side by Fremont Street.

Third. Forty-six certain squares of ground next to the above described half square of the north side, and which are designated on said plan by the Nos. from 1094 to 1116, both inclusive, and from 1119 to 1141, both inclusive, which said squares 1116 and 1119 have each 296 feet, more or less, and thence running west between said parallel lines to Milne Street, upon which said squares Nos. 1094 to 1141 from each 292 feet, more or less, and they are bounded between said parallel lines by Harrison Avenue on the north and Fremont Street on the south.

176 Fourth. Parts of squares Nos. 1147 to 1168, both inclusive, the same being composed of 50 feet, 9 inches and 2 lines, taken from the southern front of Harrison Avenue of each of said squares and running between parallel lines from Bayou St. John to Milne Street, upon each of which is a front of 50 feet, 9 inches and 2 lines, all according to said plan, all for the sum of $34,838.33, cash. Registered in the conveyance office in book 85, folios 649 and 650.

Which said above tract of land embraces the following squares and lots in squares, as per books of plans made by J. A. D'Hemecourt, surveyor, dated January 2, 1861, then deposited in the office of the Board of Commissioners of the First Drainage District, and now in the comptroller's office, City Hall.

First. The smaller portion of squares Nos. 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001 and 1002, designated in each square as lot No. 2, all fronting on Polk Street, and 7 feet, 2 inches and 6 lines in depth towards Gaines Street.

Second. The smaller portion of squares Nos. 1003 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1111, 1012, 1013 and 1014, designated in each square as lot No. 1, all front-ng on Polk Street, and measuring 6 feet, 9 inches and 2 lines in depth towards Gaines Street.

Third. The smaller portion of squares Nos. 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159,
177 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, and 1168, designated in each square as lot No. 2, all fronting on Harrison Avenue and measuring each 50 feet, 9 inches and 2 lines in depth towards Lane Street.

Fourth. The entire 46 squares, Nos. 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1119, 1120, 1121, 1122,

1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137 1138, 1139, 1140 and 1141, which said above described whole squares of ground are embraced within the Bayou St. John, Milne Street, Harrison Avenue and Gaines Street, Milne Asylum for Destitute Orphan Boys * * *.

Answer of Joseph A. Shakspeare, Mayor, to Amended Rule.

Filed December 5, 1891.

No. 12008.

J. W. PEAKE

vs.

CITY OF NEW ORLEANS.

Now into this Honorable Court comes Joseph A. Shakspeare, Mayor of the City of New Orleans, who, for answer to the amended rule herein taken against him, November 28th, 1891, says:

That, as his answer thereto, he adopts and sets up, as if
178 herein repeated, the answer heretofore filed by him on November 28th, 1891, in answer to the original rule against him in this case, and he prays the Court as in his said answer to the said original rule he has heretofore prayed.

(Signed) JOS. A. SHAKSPEARE,
Mayor.

Order—Rule Made Absolute.

Extract from the Minutes, November Term, 1891.

New Orleans,
Saturday, December 5, 1891.

Court met pursuant to adjournment. Present: Hon. Edward C. Billings, District Judge.

No. 12008.

JAMES W. PEAKE

vs.

CITY OF NEW ORLEANS.

The rule herein taken to compel the City of New Orleans to transfer certain lands, books, property, etc., to the receiver, came up for trial.

Present: R. De Gray and Chas. Louque, solicitors for plaintiffs in rule; Carleton Hunt, City Attorney, for defendant in rule: Frank N.

Butler, appearing for the Society for the Relief of Destitute Orphan Boys; when after hearing the pleadings and evidence, and the Court considering the plaintiffs in rule are entitled to the relief prayed so far as hereinafter allowed;

179 It is ordered that said rule be made absolute, and accordingly that Joseph A. Shakspeare, Mayor of New Orleans, be directed within one week, to transfer to J. W. Gurley, receiver herein, all the rights, title and interest of the City of New Orleans, as trustee of the drainage fund, in and to the property described in the inventory herein taken by Joseph D. Taylor, Esq., notary public, and more especially such rights as the city has derived from the Commissioners of the First and Second Drainage Districts of the parishes of Orleans and Jefferson, under Act No. 30 of 1871, reserving to complainant any further order as may be necessary in the premises in case other property be discovered hereafter; this order being without prejudice to any and all questions raised on the merits by the bill and answer herein.

Replication.

Filed December 8, 1891.

No. 12008.

JAMES W. PEAKE

vs.

THE CITY OF NEW ORLEANS.

Replication to Answer of the City of New Orleans.

This repliant saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith: that he will aver and prove his said bill to be true, certain and sufficient in the law to be

180 answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by his repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied is true; all which matters and things this repliant is and will be ready to aver and prove as this Honorable Court shall direct, and humbly prays as in and by his said bill he hath already prayed.

(Signed) RICHARD DE GRAY AND
CHARLES LOUQUE,
Solicitors for Complainant.

Petition of Receiver to Sell Property.

Filed January 15, 1892.

To the Honorable the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana:

The petition of J. W. Gurley, receiver in the case of James W. Peake v. The City of New Orleans, No. 12,008, with respect shows: That an act of transfer and assignment, executed in conformity to the orders of this Honorable Court, of dates 13th June, 1891, and December 5, 1891, and December 31, 1891, by the defendant, the City of New Orleans, of the property involved in this cause, is now on file, together with an inventory of the property transferred, made by Jos. D. Taylor, notary public; that it is necessary in the interest of
181 all parties that said property be sold and the proceeds thereof be brought into Court to abide its further order; wherefore, he prays for an order directing him to sell the said property at public auction after due advertisement, for cash, and authorizing and empowering him to execute and deliver to the purchasers thereof good and sufficient titles, free from all liens, mortgages and incumbrances at the expense of such purchasers, if any.

(Signed) R. DE GRAY AND
CHAS. LOUQUE,
Solicitors.

Order.

Let the receiver sell the property contained in the said inventory, as prayed for, after advertisement in two newspapers, published in the City of New Orleans, viz: One published in the English and one in the French, for the terms required by law for judicial sales of real estate at public auction, to the highest bidder for cash; and let the receiver be authorized and empowered to execute and deliver to the purchasers good and valid title, free from all liens, mortgages or incumbrances, if any there are.

(Signed) EDWARD C. BILLINGS,
Judge.

New Orleans, January 15, 1892.

Receiver's Report of Sale of Property.

Filed March 3, 1892.

To the Honorable the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana:

182 The undersigned receiver, with respect, reports: That in obedience to an order of this Honorable Court, entered on the 15th day of January, 1892, in th case in equity of James W. Peake v. The City of New Orleans, No. 12,008 of the docket, directing the

sale, for cash, at public auction, after due advertisement, of all the property transferred and assigned to him, as receiver, by the said City of New Orleans, the defendant in the above cause, by act of transfer and assignment on file, executed by the Mayor of said city on the 11th day of January, 1892, before Jos. D. Taylor, notary, under and in conformity to orders of Court of dates 13th of June, and 5th and 13th of December, 1891, he did cause all the real estate so transferred to him to be advertised for the term of thirty days, as required by law for judicial sales of real estate in the Parish of Orleans, to-wit: in the Daily Picayune in the English language, and in the L'Orleanais in the French language, newspapers published in the City of New Orleans, as for sale at public auction on the 27th of February, 1892, at 12 o'clock M., at the Canal Street entrance to the custom house building, in the said city, to the highest bidder for cash, which said advertisements of said property were as follows:

In Daily Picayune.

English Advertisement.

Judicial Advertisement.

Receiver's Sales of Valuable Real Estate Lying in the Rear of the City of New Orleans.

Under orders of the Honorable the Circuit Court of the 83 United States for the Eastern District of Louisiana, holding sessions at the City of New Orleans, of date 15th January, 1892, rendered in the case of James W. Peake v. The City of New Orleans, No. 12,008 of the docket of said Court, I, the undersigned receiver, will proceed to sell, at public auction, in front of the main entrance on Canal Street, of the Customhouse building, in said city, on the 27th day of February, 1892, at 12 o'clock M., to the highest and last bidder, for cash, all the right, title and interest of the City of New Orleans as the trustee of the drainage fund, and more specially such right as the said city has derived from the commissioners of the first and second drainage district of the parishes of Orleans and Jefferson, under Act No. 30 of 1871 of the Legislature of Louisiana, in and to the following described property, as per inventory on file in said cause, and therein more fully described, to-wit:

1. A tract of land, beginning at a point on the Bayou St. John, on the south line of the lands of the Milne Asylum of the Destitute Orphan Girls, thence on the Bayou St. John 575 feet, 6 inches, more or less, thence between parallel lines to Milne Street, measuring on said street 575 feet, more or less, bounded as follows: On the north side by the lands of Milne Asylum for Destitute Orphan Girls, on the west by Milne Street, on the south by the lands of M. Moran, on the east by the Bayou St. John, the whole as per plant of J. A. D'Hemecourt, surveyor, dated December 30, 1860, and deposited in the office of the commissioners of the first drainage district, Parish of Orleans, being the same property acquired by the commissioners

of the first draining district and at sheriff's sale, on the 2d of
184 July, 1863, under fi. fa. from the Third District Court of New Orleans, No. 17,028 of the docket.

2. Certain squares and parts of squares of ground, according to a plan by Wrotnoski, surveyor, being as follows, to-wit: Certain portions of each of twenty-three squares of ground, which are designated by the Nos. 992 to 1014, both inclusive, which portions of each north side of each said squares, fronting on Polk Street and measuring 7 feet, 2 inches and 2 lines on the Bayou St. John, the same front on Milne Street, and between parallel lines through each of said squares, from said bayou to Milne Street.

The north half of certain other squares of ground, designated on said plan by the Nos. 1067 to 1089, both inclusive, the said half of said square No. 1067 fronting 148 feet, more or less, on the Bayou St. John, and thence along the southern boundary of all said half squares between parallel lines to Milne Street, upon which said half square 1089 fronts 146 feet, more or less, and all of which said half squares are bounded on the north side by Fremont Street.

Forty-six certain squares of ground next to the above described half square of the north side, and which are designated on said plan by the numbers from 1094 to 1116, both inclusive, and from 1119 to 1141, both inclusive, which said squares, 1116 to 1119, have each 296 feet, more or less, and thence runnig west between said
185 parallel lines to Milne Street, upon which said squares, Nos. 1094 to 1141, front each 292 feet, more or less, and they are bounded between said parallel lines by Harrison Avenue on the north and Fremont Street on the south.

Parts of squares Nos. 1147 to 1168, both inclusive, the same being composed of 50 feet, 9 inches and 2 lines taken from the southern front of Harrison Avenue, each of said squares and running between parallel lines from Bayou St. John to Milne Street, upon each of which is a front of 50 feet, 9 inches and 2 lines, all according to said plan of said Wrotnoski, being the same property acquired by said commissioners of said draining district by act before Hugh Madden, notary public, on the 18th of September, 1863, from the Milne Asylum for Destitute Orphan Girls.

3. Certain portions of each of twenty-three squares of ground designated by the numbers from 1147 to 1168, both inclusive, as per plan of the same and other property made by A. T. Wrotnoski, surveyor and civil engineer, dated July 1, 1863, and deposited in the office of Hugh Madden; said squares running east and west from Milne Street on the west to Bayou St. John on the east, and said part thereon being 241 feet, 2 inches and 6 lines of each of said squares, commencing at a point 50 feet, 9 inches and 2 lines from the southern boundary of said squares fronting on Harrison Avenue, and running north toward Lane Street, on which they front.

Forty-six certain squares next to above and designated on
186 said plan by the Nos. 1169 to 1190, both inclusive, and from 1197 to 1218, both inclusive, and comprised within parallel lines, running from the Bayou St. John on the east to Milne street

on the west, Twiggs street on the north and Lane street on the south.

A certain small strip of land, being 6 feet, 9 inches and 2 lines, taken from the southern front of each of the twenty-three squares of ground designated on said plan by the Nos. 1297 to 1318, both inclusive, which front on Down street, and running between parallel lines from Milne street on the west, where it is 6 feet 9 inches and 2 lines, through each of said squares to the Bayou St. John, upon which it has the same front, being the same property acquired by said commissioners of said first draining district on the 10th day of December, 1863, before Hugh Madden, notary public, from the Milne Asylum for Destitute Orphan Boys.

4. A tract of land beginning at the north line corner of the Bayou St. John of the lands belonging to the Milne Asylum for Destitute Orphan Boys, having 12 arpents on the Bayou St. John, more or less thereon, between parallel lines, to Milne street, bounded as follows: On the north by the lands of the Society for the Relief of Destitute Orphan Boys, on the west by Milne street, on the south by land of the Milne Asylum for Destitute Boys, and on the east by the Bayou St. John; the whole as per plan of J. A. D'Hemecourt, surveyor, dated 30th December, 1870, and deposited in the office of the said commissioners of said first draining district being the same property
187 acquired by said commissioners at sheriff's sale on the 21st day of July, 1863, under fi. fa. from Third District Court of New Orleans, in suit against Female Orphan Asylum, No. 17,028 of docket of said Court.

5. A tract of land beginning at the north line corner of the Bayou St. John, of the lands belonging to the Female Orphan Society and having 12 arpents, more or less, on the Bayou St. John, thence along Bay street to Milne street, measuring 45 arpents, 80 feet, more or less, thence south along Milne street, 9 arpents, 142 feet, more or less, thence on a line to the Bayou St. John, measuring 45 arpents and 96 feet, more or less, bounded on the north by the lands of the late J. B. Genois, on the west by Milne street, on the south by lands of the Female Society, and on the east by the Bayou St. John, as per plan of J. A. D'Hemecourt, surveyor, dated December 30, 1860, deposited in the office of the commissioners of the first draining district being the same property acquired by said commissioners of the first draining district at sheriff's sale on the 21st day of July, 1863, under fi. fa. from Third District Court of New Orleans, at suit of Commissioners v. Society for Relief of Destitute Orphan Boys, No. 17,028.

6. A tract of land beginning at a point on the Bayou St. John, at the north line of the lands of the Society for the Relief of Destitute Orphan Boys, thence on the Bayou St. John 2 arpents, more or less, and between parallel lines, to Milne street, bounded as follows: On the north by the lands of Lavergne, on the south by

lands belonging to the Society for the Relief of Destitute
188 Orphan Boys, and on the east by Bayou St. John, as per plan of J. A. D'Hemecourt, surveyor, dated December 30, 1860, and deposited in the office of the commissioners of the first draining district, being the same property acquired by said commissioners at sheriff's sale on the 12th day of September, 1863, under fi. fa. from Third District Court of New Orleans, at suit of Commissioners of First Draining District v. Jean Genois, No. 17,028.

7. A tract of land beginning at Fourth street, running back obliquely through the division of squares at an angle of about 7 degrees to the north, 20 arpents, more or less, along said line to Tenth street, thence toward the lake, thence on the lake to Fourth street, bounded as follows: On the north by Lake Pontchartrain, on the west by Tenth street, on the south by lands of Genois, and on the east by Fourth street, adjoining the property late of Laurent Millaudon, all as per plan by J. A. D'Hemecourt, surveyor, dated December 30, 1860, and deposited in the office of the Board of Commissioners of the first drainage district, being the same property acquired by said commissioners of said first draining district at sheriff's sale on the 21st of July, 1863, under writ of fi. fa. from Third District Court of New Orleans, at suit of Commissioners v. Heirs of Lavergne, No. 17,028 of docket.

8. One square of ground, situated in the second district of this city, designated by the No. 902, bounded by Taylor avenue, Scott street and St. Peter street, and Orleans avenue, divided into 19 lots, numbered from 1 to 19, inclusive, and having the following
189 measurements, to-wit: 240 feet, 5 inches and 2 lines front on Taylor avenue, the same front on Scott street, 292 feet front on St. Peter and the same front on Orleans avenue.

One other square of ground, situated in the same district, designated by the No. 903, bounded by Taylor avenue, Scott and St. Ann streets, and Orleans avenue, divided into 25 lots of ground, numbered from 1 to 25, both inclusive. Said square measures as follows: 349 feet, 11 inches and 2 lines front on Taylor avenue, the same front on Scott street, 292 feet front on Orleans avenue, the same front on St. Ann street; being the same property acquired by said commissioners of said first draining district on the 22d January, 1863, from Chas. Rolling, by act before Jos. Cuvellier, N. P.

NOTE.—The above two squares are assessed by the city to Geo. Ingraham.

9. A certain piece of ground, situated in the town of Carrollton, late Parish of Jefferson, in this State, designated by the No. 245 A, bounded by Canal avenue, Edinburgh, Dublin and Fifteenth streets, measuring 240 feet front on Dublin street, the same in the rear, by a depth of 35 feet, bounded on one side by the Jackson Railroad and on the other by Fifteenth street, on both of which last-named streets it fronts; being the same property acquired by the commissioners of the second draining district on the 25th day of October, 1866, from

190 J. B. Bailey, by act before A. Hero, Jr., N. P., assessed by the city to J. L. Gubernator and the City of New Orleans, one undivided half each, as square No. 537.

10. A certain square of ground, situated in Carrollton, late Parish of Jefferson, bounded by Fourteenth, Madison, Colapissa and Adams (now Dublin) streets, composed of 24 lots, numbered from 1 to 24 inclusive, being the same property acquired by the commissioners of the second draining district on the 31st December, 1866, from F. N. Fortier, by act before A. E. Bienvenu, N. P.

Terms.—The herein described properties will be sold separately in blocks as above numbered, free of all liens, mortgages, incumbrances and taxes, if any there be, to the highest bidder, for cash; 10 per cent of the price to be paid at time of adjudication to bind the sale, the balance to be paid on passing titles.

Acts of sale before W. Morgan Gurley, notary public, Morris Building, at the expense of the purchasers.

J. W. GURLEY,
Receiver.
R. DE GRAY AND
CHAS. LOUQUE,
Solicitors for Complainant.

That, in conformity to said advertisements, he did, at the time nd place therein mentioned, proceed to offer the said lands sepately, in blocks, as in said advertisements by numbers designated, o the highest and last bidders for cash—requiring from each purhaser a deposit of ten per cent in cash, on the amount of the price at which the same might be adjudicated to him. And there-
91 upon, after duly crying the said properties in the order advertised, Dr. C. A. Gaudet, being the highest and last bidder or the several blocks designated in said advertisements as numbers ne, two, three, four, five, seven, ten, the same were severally adudicated to him, as follows:

lk. No. 1,	bought by Dr. C. A. Gaudet,	at	price of	.....	$105.00
" 2,	"	"	"	.....	620.00
" 3,	"	"	"	.....	1,000.00
" 4,	"	"	"	.....	400.00
" 5,	"	"	"	.....	500.00
" 7,	"	"	"	.....	350.00
" 10,	"	"	"	.....	150.00
					$3,125.00

the price of which he deposited 10 per cent, viz.: $312.50 in cash.
V. Mauberret being the last and highest bidder on Block No. 8,
e same was adjudicated to him at $190.00, on the price of which
deposited ten per cent, viz.: $19.00.

W. J. Brodie being the highest and last bidder on Block No. 9 the same was adjudicated to him at $65.00, on the price of which he deposited ten per cent, viz.: $6.50.

Total price of lands sold to C. A. Gaudet	.....	$3,125.00
" " V. Mauberret	.....	190.00
" " W. J. Brodie	.....	65.00
		$3,380.00

192 Block No. 6 was not offered for sale, being withdrawn by order of Court, of date 27th February, 1892.

The receiver with respect submits to the Court this report of sales made by him in compliance with the above recited orders.

Very respectfully,

(Signed) J. W. GURLEY,
Receiver, etc.

29th February, 1892.

Motion to File Report of Receiver of Sales of Land.

Entered and Filed March 3, 1892.

No. 12008.

JAMES W. PEAKE

versus

THE CITY OF NEW ORLEANS.

On motion of R. De Gray and Chas. Louque, solicitors for complainant, and on presenting the report of J. W. Gurley, receiver of the sales made by him on the 27th February, 1892, under the order of sale of January, 1892, of lands transferred to him as receiver under order of Court of 13th June, and 5th and 13th of December 1891, by the defendant, the City of New Orleans.

It is ordered that the same be filed and noted of record; and further, if no opposition to the confirmation of said report
193 sales be made within eight days from the date of filing said report, that the same be and stand confirmed, and that the receiver proceed to give title to the purchasers.

(Signed) EDWARD C. BILLINGS,
Judge.

March 3, 1892.

Opposition of City of New Orleans to Receiver's Report of Sale.

Filed March 8, 1892.

No. 12008.

JAMES W. PEAKE

versus

THE CITY OF NEW ORLEANS.

Now comes the City of New Orleans and opposes the report of the receiver herein, in all and singular and parts thereof, and further, especially as to certain sales made by him, and opposes the confirmation of the sales recited in the receiver's said report herein filed March 3, 1892. And for objection to the confirmation of the said report, and of the sales therein alleged, and for grounds of opposition thereunto, says:

First. That the alleged sales purport to have been made under the order of this Court of January 15th, 1892, whereas, the advertisement of such sales does not comply with and is not in accordance with nor authorized by the order of Court. That the order of sale directs
that, "The receiver be authorized and empowered to execute
194 and deliver to the purchasers good and valid titles, free from
all liens, mortgages or incumbrances, if any there are," whereas, the advertisement reads, "free of all liens, mortgages, incumbrances and taxes, if any there be." That "taxes" according to the law of this State, are not included in the category of "liens, mortgages and incumbrances" (39 La. Annual Rep., p. 53), and the insertion of the word "taxes" is an unwarrantable addition to the order of sale. That under the order of Court, there was no authority to sell the property free of taxes, and consequently the advertisement reciting such terms, and the alleged sales thereunder, are illegal, null and void, and opponent now pleads the said order of Court and makes the same part of this opposition.

Second. That the Court did not grant an order to sell the property free of taxes, and could not do so, for this, that under the laws of Louisiana, as administered by the Courts, a judicial sale does not free property from taxes: and that the law to this effect is set forth in the case of Morris et al. v. Lalaurie et als. (39 La. Annual Rep., pp. 47–55), and opponent now pleads the decision in the said case, and makes the same a part of this opposition, and opponent further pleads that, under the statutes of Louisiana, notaries public and other officers, authorized to convey real estate, by public act, are prohibited under penalty, from passing any act for the sale of real estate, unless the State, parish and municipal taxes due on the same
are first paid, and opponent further says, that the statutes in
195 question are obligatory and binding upon the receiver in this
case, and respondent pleads the said statutes, being the Re-

vised Statutes of the State of Louisiana, sections 3615, 3616, 3620 and 3621, and makes them part of this opposition; and opponent further says, that the sales herein were made in violation of the said sections of the Revised Statutes of the State of Louisiana, and are, therefore, null, void, and of no effect.

Third. That the advertisement under which the receiver proceeded to sell the property herein, is illegal, inadequate, and insufficient to furnish the basis of acts translative of property, to-wit:

That item No. 1 of said advertisement is illegal and defective, for this: that it gives no proper nor adequate description of the thing advertised for sale; that it purports to advertise for sale a tract of land beginning at a point on Bayou St. John, and running in the directions therein stated, whereas, the said tract is divided into squares and intersected by streets. That the said item No. 1 of the advertisement makes no reference to the squares comprised within th said tract, nor to the said streets intersecting the said tract; that said streets are public property, and not susceptible of alienation.

That item No. 2 of the advertisement is illegal and defective, for this, that it gives no proper and adequate description of the thing advertised for sale; that the date of the plan by Wrotnoski, surveyor, referred to therein, is not given, nor the place where said plan
196 is deposited, that the squares and portions of squares referred to in item No. 2 of the advertisement, are not described by metes and bounds; that the dimensions of the respective squares and portion- of squares are not given, nor the names of the streets given within which the said respective squares and portions of squares are comprised.

That item No. 3 of the advertisement is illegal and defective for this, that it gives no proper and adequate description of the thing advertised for sale; that the squares and portions of squares referred to in item No. 3 of the advertisement, are not described by metes and bounds; that the dimensions of the respective squares and portions of squares are not given, nor are the names of the streets given within which the said respective squares and portions of squares are comprised.

That item No. 4 of the advertisement is illegal and defective for this, that it gives no proper nor adequate description of the thing advertised for sale; that it purpots to advertise for sale a tract of land, whereas, the said tract is divided into squares, and intersected by streets. That the said item No. 4 of the advertisement makes no reference to the squares comprised within the said tract, nor to the said streets intersecting the said tract; that said streets are public property, and not susceptible of alienation.

That item No. 5 of the advertisement is illegal and defective for this, that it gives no proper nor adequate description of the
197 thing advertised for sale; that it purports to advertise for sale a tract of land, whereas, the said tract is divided into squares, and intersected by streets. That the said item No. 5 of the advertisement makes no reference to the squares, comprised within the said tract, nor to the said streets intersecting the said tract; that said streets are public property, and not susceptible of alienation.

That item No. 7 of the advertisement is illegal and defective for this, that it gives no proper nor adequate description of the thing advertised for sale; that it purports to advertise for sale a tract of land, whereas the said tract is divided into squares, and intersected by streets. That the said item No. 7 of the advertisement makes no reference to the squares comprised within the said tract, nor to the said streets intersecting the said tract; that said streets are public property, and not susceptible of alienation.

That item No. 9 of the advertisement is illegal and defective for this, that it gives no proper nor adequate description of the thing advertised for sale; that the description therein given is insufficient to serve as the basis of a transfer of property, and is insufficient for the identification of the property.

Fourth. That the advertisement under which the property is alleged to have been sold herein was such as to discourage competition, instead of inviting bidders, in this, to-wit: That many
198 squares of ground were advertised and offered for sale in block, as the numerous portions of property respectively set forth under the Nos. 2 and 3 of the advertisement herein; that under No. 2 are placed a large number of squares and parts of squares, and that under No. 3 are also placed a large number of quares and parts of squares; that the including of so many pieces of property under a single head as forming one block was in itself unlawful, and has a tendency to deter bidding and prevent competition and thus lessen the proceeds of sale, to the detriment of those interested, whereas, by offering the property in smaller subdivisions larger prices might have been realized.

Fifth. That according to the receiver's report, lot No. 10, namely the square bounded by Fourteenth, Madison, Colapissa and Adams (now Dublin) street, was sold for the sum of one hundred and fifty dollars. Opponent is informed that upon said square stands a valuable draining machine, which was erected at great expense, costing tens of thousands of dollars; and opponent is further informed, that the purchaser of said square, described under the No. 10 of the advertisement, claims also to have purchased said draining machine. Opponent avers that nothing whatever in the said advertisement gave the slightest indication that any draining machine was on the property, or was to be sold, or that any improvements or buildings or structures of any nature were upon any portion of the real estate which was advertised for sale; that the want of due notice was and is a serious injury and wrong; as those interested were thereby
199 prevented from taking appropriate means for protection; that it is unlawful and against good conscience to permit property thus to be sacrificed in the absence of notice or of any reference to or indication of the property in the advertisement. And opponent further represents, that said Dublin street draining machine is public property, and by the nature and design thereof, together with all the accessories, including the territory on which the same is built, inalienable; and that opponent is entitled to a

judgment accordingly, and declares that the same was not conveyed at the sale herein.

Sixth. That opponent, for further opposition and objection to the confirmation of the several sales cited in the receiver's report herein, adopts and makes part of this, his opposition, as if severally repeated herein, the averments in the answer of the city of New Orleans to the complainant's bill of complaint herein.

Wherefore opponent prays that these, its objections to the receiver's said report, and to the confirmation of the sales recited in the said report may be sustained; that said report may be rejected, and that said recited sales, and also the asserted purchase of the said draining machine may not be confirmed, but on the contrary, disapproved and declared null and void. And opponent prays that, should the sale of the real estate described under the No. 10, as follows, namely: "a certain square of ground situated in Carrollton, late parish of Jefferson, bounded by Fourteenth, Madison, Colapissa and Adams (now Dublin) streets, composed of twenty-four 200 lots, numbered from one to twenty-four, inclusive," etc., be confirmed, it be decreed that the purchaser of said real estate acquired no right or title, in or to the drainage machine thereon, and that it be decreed that said draining machine was not comprised in any sale of any property whatsoever that may have been made by the receiver herein; and that it be decreed that said draining machine and the land upon which it stands, necessary to its operation, be decreed to *the* public property and inalienable.

And opponent further prays, that should the sale of any portion whatsoever of any of the property mentioned in the advertisement herein be confirmed, the rights of opponent, the city of New Orleans, as a privileged creditor, and any other rights that the city of New Orleans may have, be reserved upon the proceeds of sale.

And opponent prays further for general and equitable relief.

(Signed) HY. RENSHAW,
Asst. City Atty.;
CARLETON HUNT,
City Attorney,
Solicitors.

CITY OF NEW ORLEANS,
[SEAL.] (Signed) By JOS. A. SHAKSPEARE,
Mayor.

201 *Hearing on Opposition of Complainant and City of New Orleans to Report of Sale (Sale as to Drainage Machine Set Aside); Others Submitted.*

Extract from the Minutes, November Term, 1891.

New Orleans, —— —, ——.

Court met pursuant to adjournment.
Present, Hon. Edward C. Billings, District Judge.

No. 12008.

JAMES W. PEAKE

versus

CITY OF NEW ORLEANS.

This cause came on to be heard on the oppositions filed by the complainant to the receiver's report of the sale herein as to the property designated as "a certain square of ground, together with all rights, etc., situated in Carrollton, parish of Jefferson, and bounded by Fourteenth, Madison, Colapissa and Adams, now Dublin, streets, composed of twenty-four lots, numbered from 1 to 24, inclusive," as well as on the opposition of the city of New Orleans to the sale of said square and to the confirmation of the receiver's report of the sale in general.

Present: Richard De Gray and Charles Louque, solicitors for the complainant; Carleton Hunt, city attorney, and Henry Renshaw, assistant city attorney, solicitors for the defendant, city of New Orleans.

202 Whereupon, after hearing the counsel for the parties, the Court maintained the oppositions to the sale of the above-described property, and ordered the sale, so far as said property is concerned, to be set aside, reserving for further consideration the questions as to whether the Court could direct a sale hereafter; all the other oppositions of the city of New Orleans to the report of sale were, thereupon argued by the solicitors and submitted, when the Court took time to consider.

Decree Confirming Sale.

Entered and Filed April 11, 1892.

Circuit Court of the United States, Eastern District of Louisiana.

In Equity.

No. 12008.

J. W. PEAKE
versus
CITY OF NEW ORLEANS.

Decree on Oppositions of the City of New Orleans to the Sale of the 27th of February, 1892.

This cause come on to be heard at this term on the opposition of the city of New Orleans to the confirmation of the sale made by the receiver herein, on the 27th of February, 1892, and was argued by the solicitors for the parties, respectively, and submitted.

Whereupon, and on consideration thereof, it is ordered, adjudged and decreed as follows: That the sales made by the receiver
203 to Dr. C. A. Gaudet, V. Mauberret and W. J. Brodie on the 27th day of February, 1892, except the sale of the square of ground bounded by Fourteenth, Madison, Colapissa and Adams (now Dublin) streets, on which the Dublin street draining machine is erected, and of the said draining machine, be now confirmed, on condition that the purchasers shall assume the payment of taxes, if any there be, which may be due thereon.

It is further ordered that the other liens, privileges and incumbrances be erased and canceled and transferred to the proceeds of sale.

(Signed) EDWARD C. BILLINGS,
Judge.

New Orleans, April 11, 1892.

Assignment of Errors.

Filed April 19, 1892.

No. 12008.

JAMES W. PEAKE
versus
CITY OF NEW ORLEANS.

Assignment of Errors.

Now, in this Honorable Court comes the city of New Orleans, defendant and opponent in the above entitled and numbered cause,

Copy

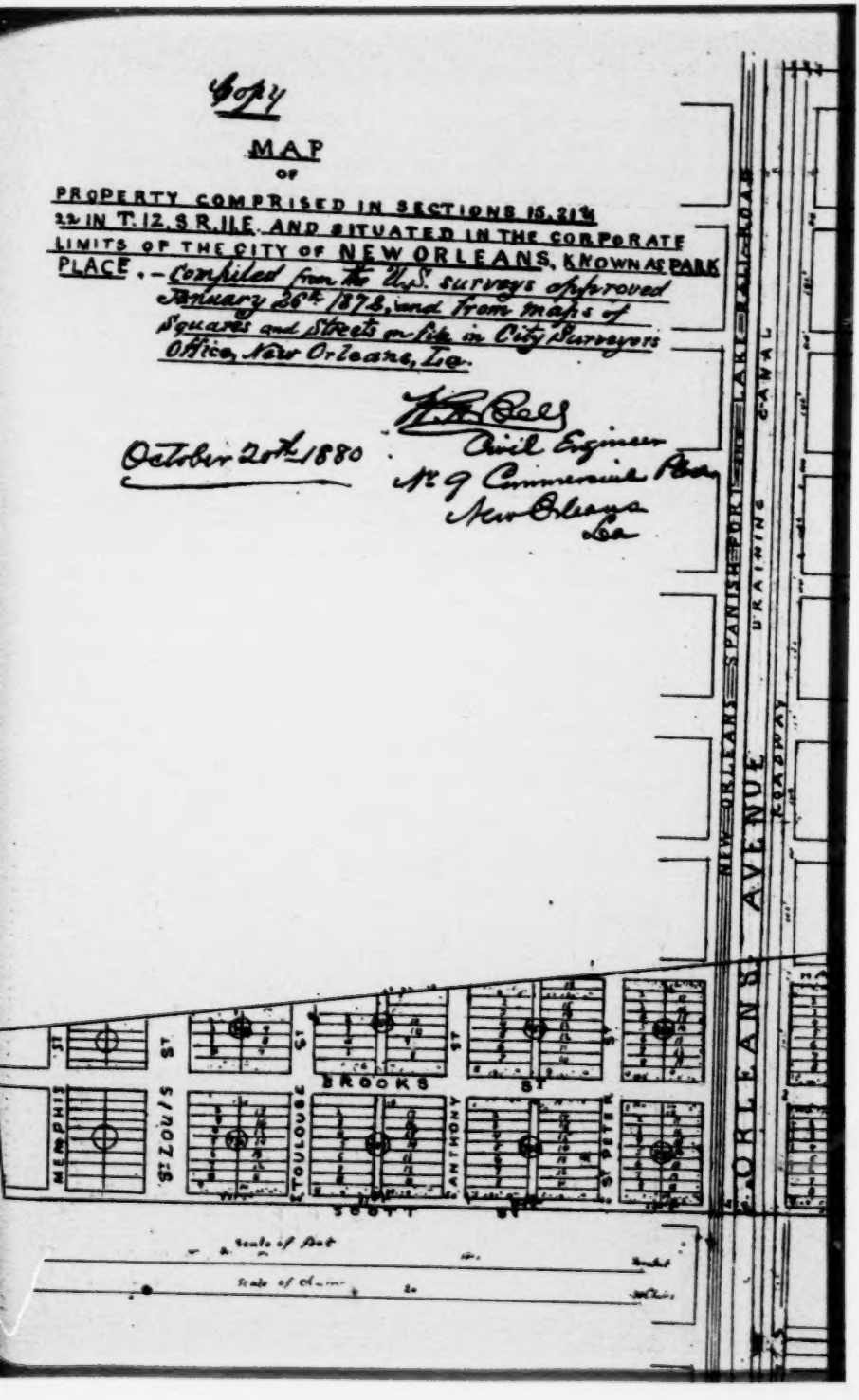
MAP

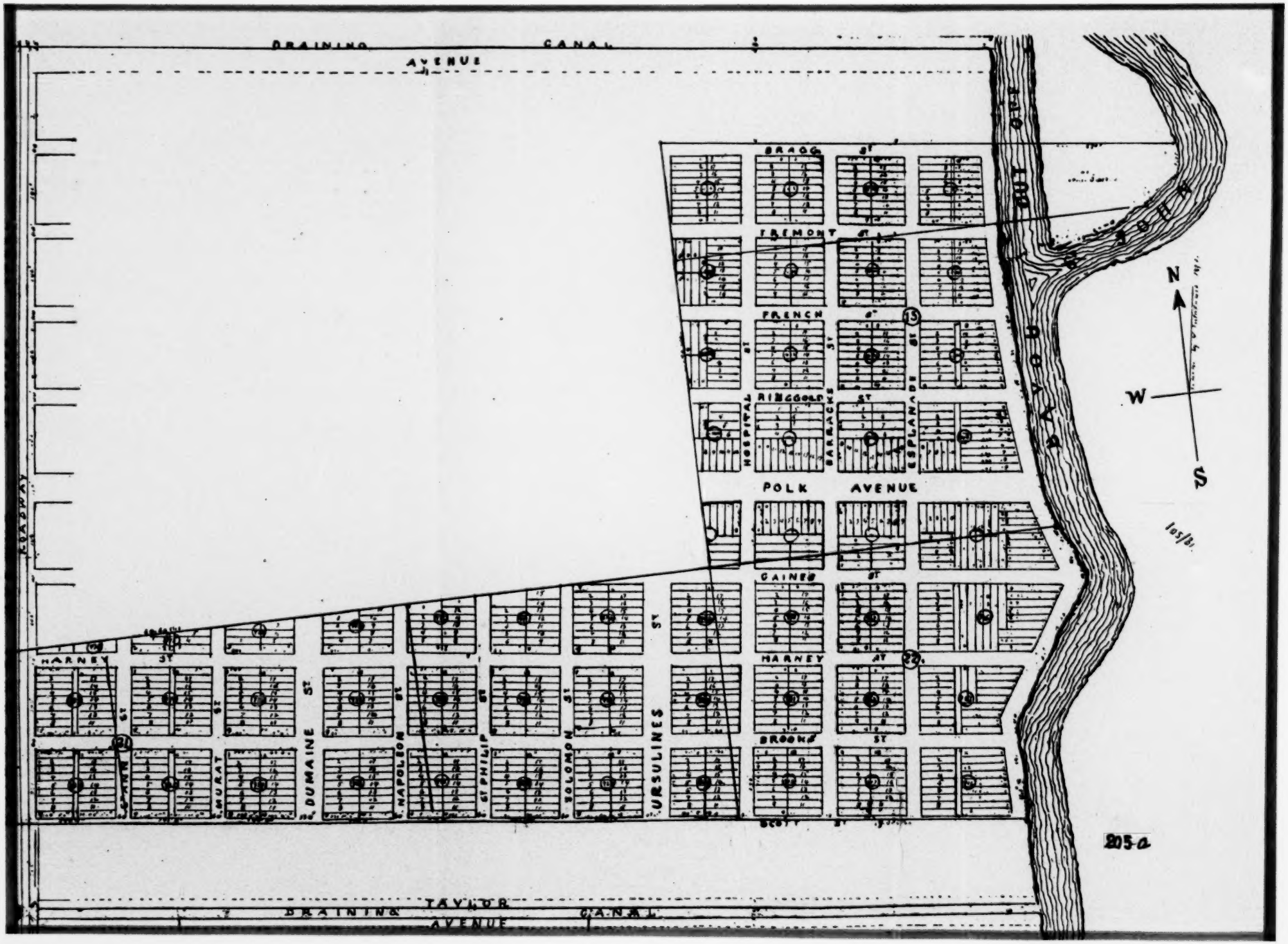
OF

PROPERTY COMPRISED IN SECTIONS 15, 21 & 22 IN T. 12, S. R. 11 E. AND SITUATED IN THE CORPORATE LIMITS OF THE CITY OF NEW ORLEANS, KNOWN AS PARK PLACE. — Compiled from the U.S. surveys approved January 26th 1878, and from maps of Squares and Streets on file in City Surveyors Office, New Orleans, La.

October 20th 1880

T. S. Bell
Civil Engineer
No 9 Commercial Place
New Orleans
La




DRAINING CANAL
AVENUE
BROAD ST
FREMONT ST
FRENCH ST
RINGGOLD ST
HOSPITAL ST
BARRACKS ST
ESPLANADE ST
POLK AVENUE
GAINES ST
HARNEY ST
BROOME ST
SCOTT ST
DUMAINE ST
MURAT ST
NAPOLEON ST
ST PHILIP ST
SOLOMON ST
URSULINES ST
ROADWAY
OLD LAKE PONTCHARTRAIN
TAYLOR DRAINING CANAL
AVENUE
N
W
S
205-a

and assigns the following errors in the opinion and decree of the Court herein, of date April 11th, 1892, on the opposition by the city of New Orleans to the report of the receiver, and to the con-
204 firmation of the alleged sales mentioned in said reports.

1. That there being a variance between the order of sale and the advertisement herein, in this, that the order of sale directed the delivery to the purchasers of good and valid titles, free from all liens, mortgages or incumbrances, whereas the advertisement reads, free of all liens, mortgages, incumbrances and taxes, the Court erred in holding as it did, that the said variance could be cured by the assumption by the purchasers of such taxes as might be due.

2. That the Court erred in holding, as it did, that the advertisement under which the receiver proceeded to sell was legal, adequate, and sufficient to furnish the basis of acts translative of property; and that the Court erred especially in confirming, as it did, sales of property which, according to said advertisement, include the public streets of the city of New Orleans, said streets being inalienable.

3. That the Court erred in not holding as unlawful the including of many pieces of property under a single head, as forming one block, and in not holding to be unlawful the offering for sale and adjudication herein of the aggregated pieces of property, in block.

4. That the Court erred in overruling the objections made by the city of New Orleans to the receiver's report, and to the confirmation of the alleged sales, in said report mentioned, and that accord-
205 ing to the evidence and the law applicable thereto, there should have been a decree in favor of opponent, the city of New Orleans, maintaining its opposition, in all and singular the parts thereof, with costs.

(Signed) HY. RENSHAW,
Asst. City Atty.;
CARLETON HUNT,
City Attorney,
Solicitors.

(Here follows map marked page 205*a*.)

Motion and Order for Appeal.

Entered and Filed April 21, 1892, as of Date April 19, 1892.

No. 12008.

JAMES W. PEAKE

versus

THE CITY OF NEW ORLEANS.

On motion of Carleton Hunt, city attorney, and of Henry Renshaw, assistant city attorney, solicitors for the city of New Orleans, defendant and opponent herein, and on suggesting that the city of New Orleans is aggrieved by the decree of this Court herein, rendered and signed April 11th, 1892; that there is error to the prejudice of said city in said decree, that said city will be irreparably injured thereby, and that the said city desires to appeal therefrom to the United States Circuit Court of Appeals for the Fifth Circuit.

It is ordered, that the city of New Orleans be allowed an appeal from said decree; returnable to the United States Circuit Court
206 of Appeals for the Fifth Circuit, on May 20th, 1892, upon giving bond in the sum of $1,500, the same to operate as a supersedeas.

(Signed) EDWARD C. BILLINGS,
Judge.

New Orleans, April 21, 1892, as of date April 19, 1892.

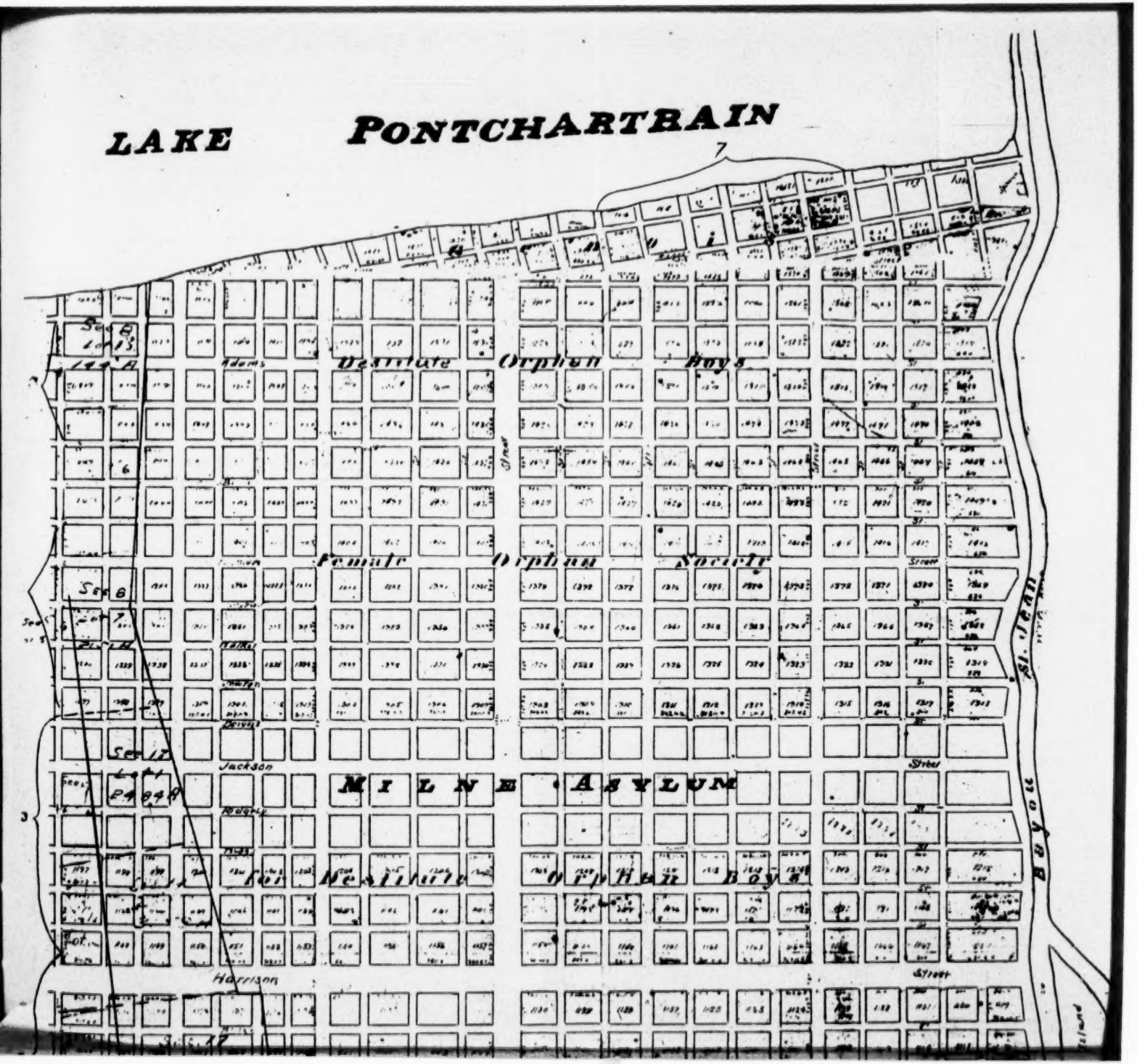
Appeal Bond.

Filed April 21, 1892.

Know all men by these presents, That we, the City of New Orleans, as principal, and John Fitzpatrick, as surety, are held and firmly bound unto J. W. Peake, J. W. Gurley, receiver, and Dr. C. A. Gaudet, V. Mauberret, W. J. Brodie, and the clerk of the United States Circuit Court for the Eastern District of Louisiana in the full and just sum of $1,500, to be paid to the said J. W. Peake, J. W. Gurley, receiver, Dr. C. A. Gaudet, V. Mauberret, W. J. Brodie, and the clerk of the United States Circuit Court for the Eastern District of Louisiana, or either of them, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 21st day of April, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas, lately at the term of the United States Circuit Court for the Eastern District of Louisiana, in a suit pending in said
207 Court, between J. W. Peake and the City of New Orleans, being No. 12008 of the docket of the said Court, on the oppo-


LAKE PONTCHARTRAIN
Adams
Destitute Orphan Boys
Street
Female Orphan Society
Jackson
MILNE ASYLUM
Female Orphan Boys
Harrison
St. Jean de Baptiste

MAP OF LANDS TO BE SOLD BY THE RECEIVER

on the 27th February 1892

sition of the City of New Orleans to the report of the receiver, and to the confirmation of the alleged sales mentioned in the said report, which was filed in the said suit a decree was rendered against the said City of New Orleans on the 11th day of April, 1892, and the said City of New Orleans, having obtained an order granting an appeal to reverse the said decree in the aforesaid suit, said appeal being returnable to the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within thirty days from the date thereof.

Now the condition of the above obligation is such, that if the said City of New Orleans shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

Signed, sealed and delivered in presence of:

(Signed) HY. RENSHAW.

[L. S.] (Signed) CITY OF NEW ORLEANS,
By JOS. A. SHAKSPEARE,
Mayor.

[L. S.] JOHN FITZPATRICK.

Approved by:
(Signed) EDWARD C. BILLINGS,
Judge.

April 25, 1892.

(Here follows map marked page 207*a*.)

208 *Proceedings Had in the Supreme Court of the State of Louisiana.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

New Orleans, Monday, February 27th, 1922.

The court was duly opened, pursuant to adjournment.

Present their Honors Charles A. O'Niell, John R. Land, Joshua G. Baker, Associate Justices.

His Honor, Mr. Justice O'Niell, pronounced the opinion and judgment of the court in the following case:

209 *Judgment of Supreme Court.*

February 27, 1922.

No. 22950.

ROBERT R. BROTT et al.

versus

NEW ORLEANS LAND COMPANY.

Appeal from the Civil District Court for the Parish of Orleans.

Porter Parker, Judge.

O'NIELL, *J.*:

This is a petitory action, in which the plaintiffs and an intervenor, being the widow and heirs of George F. Brott, deceased, claim title to fractional sections 15, 21 and 22, in T. 12 S., R. 11 E. The land, being in the corporate limits of the City of New Orleans, is also described as city blocks and squares, according to a map of that part of the city.

George F. Brott acquired title to the fractional section 21, containing 97.48 acres, by patent from the State of Louisiana, dated the 27th of April, 1874, and bought the fractional sections 15 and 22, containing 101.82 acres, from Dr. Andrew W. Smyth, who had acquired title from the State by patent dated June 3rd, 1874. Brott sold a half interest in the three fractional sections to James G. Richardson, who retroceded it to Brott on the 15th of June, 1875. The land was acquired by the State by virtue of the swamp land grant of March 2nd, 1849 (9 U. S. Statutes at Large, p. 352), was selected and surveyed, and the selection was approved on the 10th of April, 1874.

210 Fractional sections 15 and 22 front on the west bank of Bayou St. John, section 15 being immediately north of and

adjoining section 22, and fractional section 21 being immediately west of and adjoining section 22. Section 15 is bounded on the north by the Alexander Milne grant, O. B. 164 (section 113), and on the west by section 16, which was the subject of the contest in the suit of the Board of Directors v. New Orleans Land Co., 138 La., 32, 70 South., 27, and in State v. New Orleans Land Co., 143 La., 858, 79 South, 915. Sections 21 and 22 are bounded on the south by the Francois Alpuente grant, R. & R. 223 (Section 115); and Section 21 is bounded on the north by fractional Section 16, and on the west by fractional Section 20.

Defendant traces title to a tract having eight arpents front on Bayou St. John, measured from the southern boundary of the Alexander Milne grant (O. B. 164), by the depth of forty arpents, to Don Carlos Tarascon, who is supposed to have obtained a grant from the French Governor, Aubry, in 1768. The eight arpents front by the depth of forty arpents embraces the northern part, in fact the major part, of fractional section 15.

Defendant traces title to a tract having a front of three arpents (approximately 575 feet) on Bayou St. John, measured from the southern boundary of the supposed grant to Don Carlos Tarascon, by the depth of forty arpents, to Maria Chagne, who is supposed to have bought the land from Joseph Chagne, who is supposed to have held title under a French or Spanish grant to one De Moran.

211 The tract of three arpents (or 575 feet) front by forty arpents in depth embraces the southern part of the fractional Section 15, and perhaps a narrow, triangular strip along the northern edge of fractional Section 22.

With regard to the southern part of the land in dispute, defendant attempts to trace title to Francois Alpuente, and contends that the Alpuente grant, R. & R. 223, Section 115, which lies immediately south of fractional Sections 21 and 22, is erroneously located on the government map, and should be located further north, so as to adjoin the supposed De Morant grant. Defendant contends that this Court decided that the Alpuente grant should be so located, in the case of Shelly v. Freidricks, 117 La., 679, 42 South, 218.

The District Court gave judgment in favor of the plaintiffs and intervenor for all of the land claimed by them; and the defendant has appealed.

With regard to the eight arpents front on Bayou St. John, embracing the northern and major part of fractional Section 15, defendant holds title through mesne conveyances from Andres Jung, who bought from Don Carlos Tarascon, on the 3rd of July, 1773, tract of land described as follows, viz:

"A plantation situated one league from this city, on Bayou St. John, composed of eight arpents of ground on the front, with the ordinary depth of forty, bounded on one side by another

12 plantation of C. Bartholome and on the other side by another plantation belonging to Don Antonio Maxent."

In the case of the State of Louisiana v. New Orleans Land Co., 143 La., 858, 79 South, 515, where the State claimed title to the fractional Section 16, immediately west of the fractional Section 15 now in contest, this Court recognized and confirmed the defendant's title by virtue of the Don Carlos Tarascon grant, embracing the land lying immediately south of the Alexander Milne grant (O. B. 164, Section 113), and extending back forty arpents from Bayou St. John. The Court concluded that there was sufficient proof that such a grant had been made by Governor Aubry, and that, although the grant was made subsequent to the transfer of the Louisiana territory by France to Spain, by the treaty published in Versailles on the 21st of April, 1764, and published in New Orleans in October of that year, nevertheless the grant made by the French Governor was subsequently ratified and confirmed, tacitly, by the Spanish authorities, and was, therefore, a complete grant when the territory of Louisiana was transferred by France to the United States, by the Treaty of Paris, of date the 30th of April, 1803. It is true the Court went very far in holding that the grant was a complete grant, which did not need confirmation by the government of the United States; and it might be difficult to reconcile the ruling with some of the provisions of the federal statutes requiring registry of such claims.

But the equities were strongly in favor of the defendant, be-
213 cause of the long-continued possession of the land by defendant's authors in title; and, as the case was taken to the Supreme Court of the United States on a writ of error and was there dismissed, we are not disposed to reconsider the matter. The record in that case, including all of the evidence on the subject of the tacit ratification of the Don Carlos Tarascon grant by the Spanish authorities, is before us in this case. It would be impossible, therefore, to reject defendant's claim to that part of Section 15 which is embraced in the Tarascon grant, without overruling our decision in the case of the State v. New Orleans Land Co., with regard to that part of Section 16 which is also within the Tarascon grant; which we decline to do.

With regard to that part of the land in dispute which lies immediately south of the Tarascon grant, between it and the Alpuente grant, defendant's chain of title ends abruptly in a sale made by Maria Chagne, a free woman of color, to Jose Dupard, on the 10th of September, 1799.

The land is described in a translation of the deed as follows:

"Three arpents of ground situated on the Bayou St. John, bounded on one side by lands of Mrs. Widow St. Maxent and on the other by those of Michel Derruisseaux, with a depth and terms shown on a figured plan made by the royal surveyor, Don Carlos Trudeau, which I [Maria Chagne] have delivered to the purchaser for his information, which land belongs to me [Maria Chagne] through purchase from Jose Chagne about twenty-seven years ago and under private signature;" etc.

214 The deed does not refer to any grant, either French or Spanish; and there is no proof, not even secondary or parol evidence, that such a grant was ever made by either the French or Spanish government. From the declaration that the land was "shown on a figured plan made by the royal surveyor, Don Carlos Trudeau," which plan was said to have been delivered to Jose Dupard for his information, it may be inferred that Jose Chagne held under an incomplete concession from the French or Spanish authorities. But there is no evidence that the claim was ever confirmed, either expressly or tacitly, by the Spanish government after the transfer of the territory of Louisiana by France to Spain. There is no evidence that Jose Chagne or any one claiming title from him had possession of the land long enough to acquire title by prescription under the Spanish law, or long enough to warrant the inference that the Spanish authorities tractily ratified the grant, if in fact a grant was ever made. In fact, there is no pro-f—nothing more than such inference as may be drawn from the recitals in the deed from Maria Chagne to Jose Dupard—that the land was actually possessed, occupied or cultivated, by any one claiming under the supposed order of survey referred to in the deed from Maria Chagne to Jose Dupard. What is even more important is that no claim to this land, either under an order of survey or by virtue of occupancy or possession and cultivation, was ever presented to any one of the boards of commissioners created by the Acts of Congress for the purpose of investigating and either confirming or rejecting incomplete or unrecorded grants made by the French or Spanish
215 authorities. We refer to the Act of Congress of March 2, 1805 (2 Stat. at Large, 324), and Sec. 4 of the Act of Congress of April 25, 1812, Chapter LXVII, enacted for the protection of claimants who had failed to comply with the provisions of the Statute of 1805. Nor was any suit brought to confirm any claim of Jose Chagne, or of any one from whom he claimed title, or of any one claiming title from him, under the provisions of the Act of Congress of June 17, 1844 (5 Stat. at Large, 676), extending to claimants in Louisiana the provisions of the Act of May 26, 1824, (4 Stat. at Large, 52). By the very terms of the statutes referred to, all incomplete claims from the French or Spanish government, that were not asserted within the time allowed, were thereafter properly ignored by the land department of the United States; and the government was thereafter free to dispose of any such lands, as the legislative department saw fit. Davis v. Police Jury of Concordia Parish, 1 La. An., 288; 9 How., 280, 13 Law Ed., 138. Lobdell v. Clarke, 4 La. A., 99. United States v. Roynes, 9 How., 127, 13 Law Ed., 74. United States v. Dauterive, 10 How., 609, 13 Law Ed., 560. United States v. Ducros, 15 How., 38, 14 Law Ed., 591. Coffee v. Groover, 123 U. S., 1, 31 Law Ed., 51. The case of United States v. Pellerin, Roman, De Villement's heirs, and Labranche's heirs, 13 How., 9, 14 Law Ed., 28, was brought under the provisions of the Acts of May 26, 1824, and June 17, 1844; and the decision had nothing to do with the previous Acts of Congress requiring registry

of land claims with the boards of commissioners referred to
216 in the Statutes. See State v. Bowie Lumber Co., 148 La., 591, 87 South., 305. Our conclusion is that defendant has no title from the government under a supposed grant to De Morant, of the land described in the deed from Maria Chagne to Jose Dupard.

In so far as defendant claims title from Francois Alpuente, it is sufficient to say that the Francois Alpuente grant lies immediately south of and adjoining the land in dispute. Defendant's counsel are in error in saying that this Court decided in Shelly v. Fredricks, 117 La., 679, 42 South., 218, that the Francois Alpuente grant, and the Louis Allard grant immediately south of it, were located erroneously on the official survey of that township, and that these tracts should be located further north. If such an error was assumed in the case cited, the assumption was an error and was a matter of no importance to the issues presented for decision. There is no reason whatever for assuming that the surveyors located these grants in the wrong place; and, if we thought there was an error in that respect, it would not be our province to correct it. The power to make or to correct official surveys of public lands belongs exclusively to the political department of the government, and its decisions are not subject to review by the Courts, in suits between individuals. Leader Realty Co. v. Lakeview Land Co., 142 La., 169, 76 South., 599.

Defendant pleaded the prescription of ten and thirty years, but the record does not contain any evidence that defendant or
217 its authors in title had actual possession of the land long enough to sustain either plea of prescription. The only tract of land that defendant possessed long enough to acquire title by the prescription of ten years, in T. 12., R. 11 E., is situated in the rear of the Alexander Milne grant, nearly two miles from the land in contest. See Leader Realty v. Lakeview Land Co., 133 La., 646, 63 South., 253, and 142 La., 169, 76 South., 599.

The judgment appealed from is amended so as to reject the demands of the plaintiffs and the intervenor, and to recognize the title of the defendant, to that part of Section 15 that is embraced within the Don Carlos Tarascon grant, measuring eight arpents front on the west side of Bayou St. John, measured from the southern boundary of the Alexander Milne grant, O. B. 164 (Sec. 113), and extending westward across said Section 15 the depth of forty arpents. In all other respects, the judgment appealed from is affirmed. The costs of this appeal are to be borne by plaintiffs and intervenor in the proportion of one-half by Mrs. Martha J. Brott, one-fourth by Robert R. Brott and one-fourth by George O. Brott. Defendant is to pay the costs incurred in the District Court.

218 *Petition for a Rehearing on Behalf of New Orleans Land Co.*

Filed March 13, 1922.

To the Honorable the Judges of the Supreme Court:

The New Orleans Land Co., defendant and appellant in this cause, now applies for a rehearing and for cause, shows:

I.

That the defendant, the New Orleans Land Company, specifically pleaded, in the answer filed herein, that the titles held by them and their assignors antedated the purchase of Louisiana by the United States Government, and that said titles were duly protected by the treaty entered into between France and the United States, on the 30th of April, 1803. R., 18–19.

8 Statutes at Large, p. 200.

There is no dispute as to the date when the acquisitions were made, all going back, the de Morant property, to 1772, and the Terascon grant to 1773. The subsequent alienations showing the possession, the recitals that the land sold consisted of plantations, with cows, calves and houses; the presumption of valid grants under the law of evidence; the survey made by Don Carlos Trudeau, the Royal Surveyor; the proclamation of the King of Spain that all grants, complete or inchoate, are ratified, all of which is fully explained and detailed in the first supplemental brief filed by defendants and therein specially discussed, which brief is now made a part of this petition for a rehearing; all of which tends to show
219 that defendant and his vendors had a complete title to their property before the acquisition of the territory by the United States. We will point out, in a subsequent brief, that, under the laws of Spain, defendant's title was complete, perfect and conclusive, and so recognized by this Court.

The United States never acquired any title to the land in dispute, and could not, and did not, transfer to the State any title under the Swamp Land Grant of 1849.

9th U. S. Statutes at Large, pp. 352, 353.

II.

If Widow de Morant, Terascon, Alpuente and Allard had no perfect and complete title to their property, there can be no doubt that they claimed or held the same before 1849. Their notarial title, executed before the Spanish notaries, offered in evidence under the note of evidence, R. 70, is conclusive evidence of that fact. The result is that by Section 2 of the Swamp Land Grant the land claimed or held by individual property owners, is, in exact and precise words exempted from the transfer of swamp land to the State, and the Secretary of the Treasury is given no authority, but on the contrary, is prohibited from certifying any such land to the State. Section 2 reads as follows:

"That as soon as the Secretary of the Treasury shall be advised by
"the Governor of Louisiana that the State has made the neces-
220 "sary preparation to defray the expenses thereof, he shall
"cause a personal examination to be made, under the direc-
"tion of the Surveyor General, thereof, by experienced and faithful
"deputies of all the swamp lands therein, which are subject to over-

"flow and unfit for cultivation; and a list of the same to be made out "and certified by the deputies and surveyor general, to the Secretary "of the Treasury, who shall approve the same, so far as they are not "claimed or held by individuals; and on that approval the fee simple "of said lands shall vest in the said State of Louisiana, subject to "the disposal of the Legislature thereof; provided, however, that the "proceeds of said lands shall be applied exclusively, as far as neces- "sary, to the construction of the levees and drains aforesaid."

9 Statutes at Large, p. 353.

The sale by Maria Chagne to Jose Dupart, executed before Pierre Pedesclaux, Notary Public, on the 10th of September, 1799, reciting that he had bought 27 years ago, and the sale by Jose Dupart to de Morant before Pierre Pedesclaux, Notary Public, on the 20th of March, 1805, were offered in evidence, R. 78, and made it positive and certain that, even if there existed some flaw or defect in the title of these lands held by the defendants and their vendors, there can be no question that these lands were claimed or held by them when the above statute was enacted.

The Secretary of the Treasury had no authority to approve
221 to the State any land claimed or held by individuals; this was beyond his jurisdiction, and his action is subject to be reviewed by the Courts.

The State of Louisiana acquired no right to the property of the defendant under the above statute, and could transfer none by the issuance of the patent to Dr. Smythe, and he could, by his transfer, give to the plaintiffs no right or cause of action.

Both of these points, although formally pleaded in the answer, were not discussed in the opinion of the Court, but as a matter of fact, were overruled, inasmuch as plaintiffs recovered judgment.

It is impossible for counsel or the defendant, the New Orleans Land Co., to understand how such simple and self-evident propositions as above stated, can be overruled, or passed under silence, by this Court.

III.

The de Morant tract has been acquired by the defendant from Dr. C. A. Gaudet, who bought the same from the receiver of the drainage taxes appointed by the late Circuit Court of the United States for the Eastern District of Louisiana in the matter of Peake v. City of New Orleans, No. 12,008 of the docket of said Court.

The sale was ordered and made to foreclose the trust created by Act No. 30 of 1871.

222 The sale was duly confirmed by the Circuit Court, and the judgment was affirmed by the Circuit Court of Appeals, Fifth Circuit. 38 Fed., 779, 52 Fed., 74, Peake v. New Orleans.

Your Honors have decided, in the Leader Realty case, against the New Orleans Land Co., 142 La., 169, on the ground that the property of the State was not liable for drainage taxes, and you have refused to recognize the validity of the receiver's sale.

All of the land included in the Leader suit lay back of the 40-

arpent line from Bayou St. John, which formed the boundary line of the grants.

In the present instance the de Morant property was assessed for drainage taxes, it was not the property of the State, but became the property of the Drainage Board, organized under the Act of 1858, No. 165, p. 114. Under Act 30 of 1871, the State ordered the Mississippi and Mexican Gulf Ship Canal Co. to do the work of drainage of New Orleans, and Section 9 of said Act ordered the Board of Drainage Commissioners to turn over all property purchased and held by them to the City of New Orleans (1871, pp. 77-78), to be held in trust for the payment of the drainage work, and eventually for the benefit of the City of New Orleans should the same not be required for drainage. The conclusions reached from the reading of this Act are, first that that Legislature of the State, having placed the de Morant property in trust for the payment of work
223 ordered to be done to drain it, rendered that property liable to be sold for the payment of such work; second, that the Legislature having disposed of the property, in 1871, nothing remained for the Register of the Land Office to sell in 1874. Under the Swamp Land Grant the Legislature alone was given the right to dispose of the land.

The de Morant property was the first tract of land sold by the receiver to Dr. C. A. Gaudet.

All the proceedings in the case of Peake v. City of New Orleans, No. 12,008, of the Circuit Court of the United States, were offered in evidence by the defendant. See R., 71. These proceedings appear in a printed record, and form part of this record.

The sale by the Sheriff of the de Morant property to the Board of Drainage Commissioners was made on the 10th of October, 1863, and was registered in the Conveyance Office, B. 85, f. 641.

The judgment, writ of fieri facias and sheriff's return showing the sale, was duly offered in evidence, also the proceedings under No. 17028, Third District Court of New Orleans, R. 78.

The sale of Joseph Dupare to de Morant was executed before Pierre Pedesclaux on the 20th of March, 1805, was also duly offered in evidence. R. 78.

224 The Act of 1871 contains the following directions in Section 9, p. 77:

"That in order to provide funds for the payment of the work to "be done by the said company, (the Mississippi and Mexican Gulf "Ship Canal Co.), the three boards of draining commissioners for "the drainage districts of Orleans and Jefferson, established under "the Acts of March 18, 1859, of March 17, 1859, and the several "amendments thereto * * * shall transfer to the Board of Ad- "ministrators of New Orleans (to-day, the City Council), all moneys, "assessments and claims for drainage in their hands, or under their "control, all titles to real estate * * *; that the Board of Ad- "ministrators of New Orleans, be and are hereby subrogated to all "the rights, powers, and facilities possessed and enjoyed by the Com- "missioners of the several drainage districts, * * * said assess- "ments are hereby confirmed * * * provided * * * that

"all property, not money, so received shall be held in trust for the "payment of said Mississippi and Mexican Gulf Ship Canal Co., and "ultimately for the benefit of New Orleans, should the same not be "required for the work of drainage, * * *. 1871, p. 78.

It was to enforce the trust created by the above act that the proceedings in the Circuit Court of the United States in the case of James W. Peake v. The City of New Orleans culminated in the sale of the de Morant and other tracts to Dr. C. A. Gaudet, who sold to the New Orleans Land Co.

225 Under the foregoing state of facts the defendants contend that the proceedings of the United States Court, in selling and confirming the sale, are not subject to a review by this Court and must remain as a protection to the ownership of the defendants.

The State of Louisiana had acquired no title to the de Morant property under the swamp land grant of 1849, as contained in 9th Statutes at Large, p. 353.

First. Because the title of Jose Dupart was protected by the treaty between France and the United States; and Congress had no authority to pass any law which would contravene or defeat this treaty;

Second. Because the de Morant tract was claimed by Dupart, and de Morant and is specifically exempted from the donation to the State under the swamp land grant of 1849.

Third. Because the assessment against de Morant for drainage and the sale of the Board of Drainage Commissioners are specially ratified by the Act of 1871, and said property was placed in trust for the payment of drainage work ordered and ultimately given to the City of New Orleans. That the creation of the trust for drainage purpose, made in the Act of 1871, was in direct obedience to the proviso contained in the swamp land grant "that the proceeds of said lands shall be applied exclusively as far as necessary to the construction of the levees and drains." 9 Statutes at large, p. 353.

226 Fourth. Because, under the foregoing facts and under the law, the Circuit Court had perfect jurisdiction of the matter, in as much as James W. Peake, was a citizen of New York, suing the City of New Orleans, and the matter in dispute was the dealing with and foreclosure of a trust, created by the Legislature. The judgment and sale ordered by that Court is binding on this Court. This point has specially been mentioned in the original brief, filed by counsel for defendant, at p. 7, and is now reiterated, not having been passed upon by the Court. Your Honors will also find that this point was raised as a defense in our answer, R., p. 19. This defense is tacitly overruled since judgment was given in favor of plaintiffs.

Fifth. Because, even if the State had been the owner of the property under the swamp land grant, having ratified the assessment for drainage against de Morant, and having placed said property in trust for the payment of the drainage work, is now estopped from claiming the property free from any lien.

IV.

It was impossible for counsel of defendants to have presented and directed the Court to the multitude of facts contained in the Records and to have sufficiently pointed the way so as to enable the Court to find the facts of this cause, in the one hour allowed for argument.

It is no wonder, therefore, to find that the Court erred in stating
227 that the New Orleans Land Co. claimed that the Alpuente tract was found improperly located in the case of Shelly v. Fredrichs, 117 La., 679.

The decision in which this Court found the Alpuente tract improperly located on the map of Sulakosky, made under contract with the United States, was in the case of Castera Heirs v. New Orleans Land Co., 125 La., 877.

This record contains as evidence on p. 70, the following offer made by the defendant: "Deed of sale by Francois Alpuente to A. Hodge, Jr., on the 19th of May, 1836, by Act before A. Ducatel, Notary Public, and the registry thereof;"

"The sketch of survey and approval by the United States govern-
"ment to be found at page 215 of the same transcript (See R., p.
"66,—No. 17,697, of the Supreme Court, entitled: Heirs Louis
"Castera v. New Orleans Land Co.), and found in American State
"papers, Gail and Seaton's edition, confirmed by Act of Congress,
"approved 3rd March, 1835. Statutes at Large, V. 4,799, Middleton
"& Brown Edition." "The decision of the Supreme Court in that
"case, reported in 125 Louisiana Reports, p. 877, and following."
R. 71.

In the above case, the New Orleans Land Co. was claiming the Alpuente tract as located by the United States survey. The Taylor Avenue Canal, which was shown on the map, and the Western R. R., built on Taylor Avenue, left no doubt as to the location. Yet this
228 Court disregarded the Sulakosky survey and declared that the Beugnot and Castera, which is the Allard tract, was located where the Alpuente tract was shown on the map. "The Court stated that the Alpuente, de Morant and other tracts are "situated beyond, in the direction of the Lake." 125 La. p. 880. Castera Heirs v. N. O. Land Co. See pp. 4 et seq. of the first supplemental brief filed by defendant and made part hereof, where a great part of this decision is printed.

In this case your Honors say: "In so far as defendant claims title
"from Francois Alpuente, it is sufficient to say that the Francois
"Alpuente tract lies immediately south of and adjoining the land
"in dispute. Defendant's counsel are in error in saying that this
"Court decided in Shelly v. Fredrichs, 117 La. 679, 42 S. 218, that
"the Francois Alpuente grant and the Louis Allard grant, im-
"mediately south of it, were located erroneously, on the official sur-
"vey of that ownship."

It then becomes a question of fact, whether such an opinion and judgment have been rendered by this Court. Let your Honors call for transcript 17,697, and examine that record and you will then be convinced of the truth of our contention.

If the Alpuente tract be within the location the defendants contend for, then it is within the disputed territory, and should not be given to the plaintiffs.

When a question of title and location has been passed upon by the Court, in a judgment which has become final, the decision
229 becomes a rule of property, which must be followed and respected.

Your Honors must examine the petition, the answer and three records: 1st. Shelly v. Fredrichs, No. 16,175, of your docket; 2d., Castera v. New Orleans Land Co., No. 17,697; 3d., State of Louisiana v. New Orleans Land Co., No. 22,740.

After examining these three records you will be convinced: 1st, That the tax titles of George Fredrichs cover the Beugnot and Castera (Louis Allard) tract, which is called Alpuente tract on the U. S. map of Sulakosky. This tract covers the territory between Brooks and Scott Streets in the disputed territory; 2nd., That the Alpuente tract is further north than the Allard tract, and is in the disputed territory; 3rd., That the de Morant tract lies south of the Terascon grant, and north of the Alpuente; 4th., That this Court has found as a fact that the Terascon grant was a plantation and that the land on both sides of that grant, north and south, were also plantations, inhabited and cultivated. We copy from the decision of this Court; 143 La. 870, State v. N. O. Land Co.:

"The defendant has been unable to produce either the original or "a copy of the document evidencing a grant to Carlos Tarascon, but "accounts for the absence of the document itself or its registry by "calling attention to the fact that the records of the registry of the "deeds of that time, as well as all archives relating to land
230 "grants, were destroyed by fire in 1788, a fact, established "by a letter of Thomas Jefferson to Congress of date Novem- "ber 3d, 1803. (American State papers, Vol. 1, Miscellaneous Ed. "of Gale's & Seaton, p. 351, No. 164, of lands and titles), and by the "following statement in Landry v. Martin, 15 Louisiana 9, decided "in 1840: 'The archives of the province were partially destroyed in " 'the conflagration of New Orleans in 1788, and whatever escaped " 'from the flames was carried away on the transfer of the " 'province.' "

In this same case, the Court said:

"After long and continued possession of land for nearly half a "century (in the case at bar, 150 years), if a written grant were "necessary, the testimony of witnesses, after the loss of the archives "and titles, will authorize the Court to presume it.

"The testimony of witnesses in the instant case is lacking; but its "absence is supplied, we think, by the recital in this Terascon deed "made at a time unsuspicious and supported by the evidence of the

"titles (either the original document itself, or some duly authenti-
"cated copy of it), which the deed recites, was then and there
"delivered by the seller to the purchaser!

"As to the possession, the rear part of the land, the part involved
"in this suit, consisting as it does of swamp, has of course, not been
"in any one's actual possession; but the recitals in the deeds that
"what was sold was a plantation (a habitation), indicates unmis-
"takably that the front part was actually occupied. There
231 "was evidently a house upon the land and from the descrip-
"tion, it is evident that the lands on each side were also
"plantations.

"There can be no doubt at all that the successive titularies of this
"land for more than 150 years have been confident in the security
"of their title. They should not be distributed at this late day unless
"the legal situation requires it." 143 La., 870.

As to the possession and its effect under the Spanish law, this Court said:

"An actual occupancy which thus existed for more than 30 years
"during the Spanish regime of land well within what are now the
"city limits and within about one mile of what were then the city
"limits, and further brought to public attention by two notarial
"transfers made during that time may well be considered to have
"had the tacit, if not express, confirmation of the Spanish authori-
"ties.

"Under the Spanish law, a possession of 30 years even unac-
"companied by title of any kind, would mature into title." White's
"New Recopilation, V. 2, p. 734.

The survey made by the Royal Surveyor, Don Carlos Trudeau, and the sale by Chagne to Dupart, executed before the Royal Spanish Notary, Pierre Pedesclaux, indicates that the officers of Spain were well aware that the tract of land of de Morant, was severed from the Spanish domain; these indications taken in conjunction with the
recitals of the Terascon grant, in evidence in this case, and
232 as found by this Court, that the land adjoining was like the
Terascon grant, a plantation, corroborates the fact that Jose Chagne was in possession 27 years prior to 1799, the date of his sale to Dupart, which would bring the possession and ownership of Chagne back to 1772. The prescription of 30 years had been accomplished in 1802. The transfer of Louisiana was only made in 1803.

In the first supplemental brief of defendant we have quoted the Spanish law in full on that subject, and we have in addition reproduced the proclamation of the King of Spain, in which he declares "that the inhabitants may continue and be protected in the peaseful possession of their property; that all grants of property of whatever denomination may be confirmed," *and* etc. See first supplemental brief of Defendant, p. 20. See also the proclamation of Casa Calvo, of May 18th, 1803, same brief, pp. 24 and 25.

Before closing this petition for rehearing, defendant calls the spe
cial attention of this Court to the contradictory position assumed b
the Court in relation to the Sulakosky survey.

Without citing other cases, but restricting ourselves to the de
cisions rendered on the land titles held by respondent, your Honor
have disregarded the survey of Sulakosky in the cases of Caster
heirs v. N. O. Land Co., 125 La., 877. You have again disregarde
it in the case of State of Louisiana v. New Orleans Land Co.
233 143 La., 872. In this very case of Brott v. Land Co., yo
have again disregarded the survey and decreed the Terasco
grant, which was ignored by the surveyor, to be the property of th
defendant. However, when the de Morant title is set up, which wa
in existence long before the transfer of Louisiana, your Honors sa
that you are bound by the survey.

Does it not strike your Honors forcibly, that if an ex parte surve
is sufficient to defeat the lawful title of a real estate owner, that h
is thus deprived of his property without due process of law?

"Where there is a better title, the certificate of survey is not co
clusive against that title."

9 Wall., 286, Public Schools v. Walker.
93 Fed. Rep. 896, Smyth v. Canal Bank.

We refer your Honors to our first supplemental brief, pp. 5, an
following.

V.

In the answer, R. 20, your respondents set up: "That responden
have always paid their taxes punctually and plaintiffs have nev
paid one cent." R. 20.

The prayer is that the suit be dismissed and for general reli
R. 20.

Under the above allegations, if all we have contended for be
no avail and your Honors should still be determined to gi
234 our property to the plaintiffs, we certainly should be refund
all the taxes paid by us, before giving possession of our pro
erty to the plaintiffs and the case should be remanded for the pu
pose of fixing the amounts to be refunded to defendants. Th
would be an act of simple justice covered by the prayer for gene
relief.

We conclude:

1st. That under the treaty between France and the United Stat
that grants of all nature and denominat-ons perfect or inchoate,
protected; that the mere possession of property is also protected a
that no reason can be validly advanced by this Court to author
your Honors to disregard the terms of the treaty;

2nd. That the various acts of sales executed before the Spanish
taries by the owners of the various tracts of land in dispute sh
that they were undoubtedly claimed or held prior to 1849, and

same are excluded from the Swamp Land grant to the State of Louisiana. 9, Statutes at Large, p. 353.

3rd. That the sale made by the Receiver of drainage taxes appointed by the Circuit Court of the United States for this district, is a muniment of title held by defendants, used as long as the judgments ordering and confirming the sale, remains in force, the State Courts are without jurisdiction to disregard the same, and cannot treat said judgments as absolute nullities.

235 4th. The Act No. 30 of 1871, ratified and confirmed the drainage assessment, seizure and sale of the de Morant tract to the Board of Drainage and ordered the Board of Drainage Commissioners, who purchased the same, to turn the same over to the City of New Orleans to be held in trust for the payment of the work of drainage, and it was not in the power of the Register of the Land Office to have given a patent for this land; that the State Legislature disposed of said land, in 1871, and Register could not, in 1874, make another disposition of same.

5th. That the time allowed counsel to argue a case replete with such a multitude of facts, was entirely too short to have enlightened the Court. The Alpuente tract was dislocated from the map of Sulakosky, and was decreed to be three arpents further north, in the matter of Castera heirs v. New Orleans Land Co., 125 La., 877, and not in the case of Shelly v. Fredrichs, 177 La., 679.

This map was again found erroneous in the case of State v. New Orleans Land Co., 143 La., 870, and again in this case, and it was error for this Court to say that defendants are bound by this erroneous survey. If an ex parte survey can divest a land owner, his property would be taken away from him without due process of law.

6th. That in case this Honorable Court should still be of the opinion that defendants' land must be taken away from them, they should be entitled to recover the taxes paid by them, and
236 plaintiffs should not be allowed to take possession until the payment to defendant of all taxes paid by them.

Defendants respectfully pray for a rehearing of this case.

Respectfully submitted,

CHAS. LOUQUE,
W. O. HART,
Of Counsel for N. O. Land Co.

N. O., March 13, 1922.

237 *Petition for Rehearing on Behalf of Plaintiffs and Intervenor, Appellees, Robert R. Brott et al.*

Supreme Court of the State of Louisiana.

No. 22950.

ROBERT R. BROTT et al., Plaintiffs and Appellees,

vs.

NEW ORLEANS LAND CO., Defendant and Appellant; GEORGE O. BROTT, Intervenor and Appellee.

Petition for a Rehearing.

To the Honorable the Supreme Court of the State of Louisiana:

Now, into court, comes plaintiffs and Intervenor, and respectfully pray that a rehearing be granted herein, insofar as the land lying immediately south of the property, confirmed to Alexandre Milne as Section 116 O. B. 164, measuring eight arpents front on Bayou St. John by forty arpents in depth, claimed by plaintiffs to have been granted by Aubry and Foucault at the time when Louisiana was a Spanish territory, in 1766, to Carlos Tarascon, is concerned, because of the following errors in the opinion and decree handed down herein, to-wit:

First Error.

It was error for the court to find that the self serving statement in the transfer by Carlos Tarascon to Andreas Jung, executed before Andres Almonaster de Roxas, July 3, 1773, proved that any grant was actually made.

The only evidence of a grant or concession to Tarascon is the declaration made in that deed of date July 3, 1773, that the land was held by him (Tarascon) "by concession made to him by Monsr. Aubry, French Governor, at the time of his domination, before Stanr. Foucault, Commissary, as appears in the title that he delivered to the purchaser."

The register of French grants in the Land Office of the United States was not consumed by any of the fires that occurred in New Orleans prior to the cession of Louisiana by France to the United States, referred to by counsel for defendant. We find a reference to this register in the D'Auterive case, where a similar grant, made by the same authority, issued in 1765, was being investigated. In the 10th Howard, p. 616, in stating the points made by counsel for the plaintiff in that case, it is said:

"1. It is contended that the copy of the grant, which is in evidence, is not sufficient proof of its genuineness. This copy was taken from the record of French grants in the Land Office
238 at New Orleans, and is attested by the Register of that office."

Furthermore, a copy of the grant recorded in this register of Land grants was before this court in the case of Lavergne's Heirs vs. Elkins, 17 La. 231.

Therefore, it is confidently submitted, the statement in the deed having been objected to when offered, and the defendant having failed to produce from the register of land grants a copy of the grant, which was the next best evidence to the alleged grant itself, that there is no competent evidence before the court to show there ever was any grant made to Tarascon as stated. The rules of evidence here involved are so simple as to require no discussion.

Second Error.

It was error for the court to hold that the alleged grant by Aubry was not absolutely null and void.

In support of this we quote three paragraphs of the syllabus in the case of United States vs. D'Auterive, 10 Howard, p. 609, which are just as applicable to this case as to that.

"Following out the principles applied to the construction of treaties in the cases of United States vs. Reynes and Davis vs. The Police Jury of Concordia, in 8 Howard, this court now decides that a grant of land in Louisiana, issued by the representative of the King of France in 1765, was void; the Province of Louisiana having been ceded by the King of France to the King of Spain in 1762.

"The title to the land described in this void grant was vested, therefore, in the King of Spain, and remained in him until the Treaty of St. Ildefonso. It then passed to France, and by the treaty of Paris became vested in the United States.

"None of the Acts of Congress have confirmed this grant."

Not only were such grants pronounced void in the D'Auterive case, but in a large number of other cases of like tenor, cited in the case of Board of Directors vs. New Orleans Land Co. 138 La. p. 51.

Third Error.

It was error for the court to hold that where one was shown to have had possession of the property pretended to have been granted, as above, by at one time having two cows and four calves on it, no confirmation by Congress was necessary.

Only three classes of claims to land have ever been recognized by the United States.

The Act of Congress of March 2, 1805, gives the right to have confirmed inchoate titles, that is, all titles not based on a legal French or Spanish grant.

Section 1 of that act deals with persons or legal representatives of persons, who, on the first day of October, 1800, were residents of the territory, and had obtained from France or Spain, respectively, during the time that said governments had been in actual possession of the territory, and had had duly registered warrants or orders

of survey for lands lying within said territory to which the Indian title had been extinguished, and which were on that day, to-wit: October 1, 1800, actually inhabited and cultivated by said persons or persons for his or their use.

Any person or persons, possessing all of the above requirements, could have their titles completed and confirmed, provided they produced the evidence before the Board of Commissioners, as required by said act.

Section 2 relates to persons above the age of 21, who had, prior to the 20th of December, 1803, with the permission of some Spanish officer and in conformity with the laws and customs and usages of the Spanish government, actually settled on said land. These persons were granted authority, under certain conditions, to have their claims confirmed.

This act provides, in Section 4, that all persons making claims to land, under sections 1 and 2, must register their claims and make proof of the facts upon which they claim the right to have their titles confirmed to the Board of Commissioners. Those possessing complete "legal" French or Spanish grants were required to register, but not to make any proof, except the original grant and the mesne conveyances.

In the D'Auterive case, the Supreme Court of the United States held that all grants, founded upon mere territorial occupation by France or Spain, were embraced within the first two sections of the act. "This section then proceeds to declare as a penalty for non-compliance with its directions, that all the rights of claimants derived from the first two sections of the act (embracing all grants founded upon mere territorial occupation by France or Spain)
shall become void and forever after be barred." 10 How-
240 ard, 626.

As whatever rights parties claiming ownership under Carlos Tarascon could have had,—there being nothing more than a void grant to Carlos Tarascon—were based merely on possession with the presumed consent of the Spanish authorities, the alleged French grant to Tarascon being a nullity, it is difficult to understand how the court could avoid the necessity for confirmation, as required by the Acts of Congress.

The idea that possession of the precarious sort shown in this case and the passage of an act of sale before a mere Spanish notary could be regarded as a complete title not needing confirmation, is completely negatived by the cases decided both by the Supreme Court of the United States and this Honorable Court.

See the case of United States vs. Ducros, 15 Howard, p. 38, and the discussion of that case, beginning at page 31 of the first supplemental brief, on behalf of plaintiffs and Intervenor, appellees, being the red brief.

Again, in the case of city of New Orleans vs. Union Lumber Company 145 La. p. 476, in which was involved the rear portion of the Livaudais Plantation, in the city of New Orleans, which property was the subject of the suit of United States vs. Roselius, 15 Howard, p. 36, this court said:

"And an order or decree of the Supreme Council of the province of Louisiana, in the Succession of Broutin, was not an act of the government of France. The council had no authority to grant patents to public lands while sitting as a judicial tribunal. The Supreme Council, in the Succession of Broutin, was not attempting to sell or grant public lands; it was there disposing of private property belonging to the Succession of Broutin. And, indeed, McDonogh had petitioned Congress to confirm his inchoate title in 1858, just as Livaudais had done in 1821 with reference to that portion of the tract 80 arpents back from the river.

"In passing upon this very question, the Supreme Court of the United States said in the case of U. S. vs. Ducros, 15 How. 38, 14 L. Ed. 591, where the appellees claimed to be the owners of certain lands which had been adjudicated in a judicial proceeding before Baron de Carondelet to the widow of Toutant Beauregard, which was during the time of the French domination in Louisiana:

" 'The proceedings before Carondelet in 1793, in the settlement of the estate of Louis Toutant Beauregard, could not be construed as a confirmation of the French grant, from the mere circumstance that in the inventory, decedent's estate is described as running back to the lake. Carondelet could not be said to confirm, in his political capacity, a title which is not even stated in the mere formal proceedings before him in his judicial capacity.'

241 "And so when Pontalba bought the property in question February 9, 1760, in the Succession of Mr. and Mrs. Broutin, which sale was made by Charles Marie Delalande Dapremont, councilor judge of said court, commissioner nominated to that effect, Jean Baptist Raguet, councilor of said council acting as the King's Attorney General, Pontalba did not acquire a patent from the crown of France. He simply acquired whatever title the Broutins had, and which was sold in their succession. Such an act of sale of lands belonging to private individuals, in probate proceedings, cannot possibly be construed into an action by the government. Such title cannot be said to have emanated from the government; and if it could have borne such construction it would have been an inchoate title, and not a patent. Title did not pass under an inchoate grant. The title remained in the sovereign until a complete title was granted." 145 La. 480-481.

See, also, Board of Directors vs. New Orleans Land Co. 138 La. p. 49.

Furthermore, Mr. Justice O'Niell, in passing on this identical title claimed by defendant in the case of Leader Realty Co. vs. Lakeview Land Co. 142 La. 169, the specific land in dispute in that case, to which Mr. Justice O'Niell referred, being within the 40 arpent line from Bayou St. John, West of Section 16, and immediately below the Milne concession O. B. 164, said:

"The defendants thus trace title to that part of the land in contest back to one Don Carlos Tarascon. The only evidence of a grant or concession to Tarascon is the declaration made in a deed by him

to one Andre Jung, of date the 3rd of July, 1773, that the land was held by him (Tarascon) 'by concession made to him by Monsr. Aubry, French Governor, at the time of his domination, before Stanr. Foucault, Commissary as appears in the titles that he delivered to the purchaser.' There is therefore no more evidence of a concession to Tarascon in this case than there was in the case of Board of School Directors vs. New Orleans Land Co. 138 La. 32. The reasons for holding that the New Orleans Land Company failed to prove that a valid or complete concession—or a concession at all—from the French or Spanish government was made to Tarascon are fully set forth in the opinion rendered in that case. Although the decision then rendered did not (because of the plaintiff's lack of authority to prosecute the suit) become final, the reasons for holding that there was no proof of a concession from France or Spain to Tarascon are entirely applicable to the present case, and it would serve no useful purpose to repeat them. It is sufficient to say that, in this case as in that, the defendants failed to prove that there was any prior grant or concession conflicting with the right of the United States government to grant the land, as it did, to the State of Louisiana." 142 La. p. 177.

And here the court's attention is directed to the fact that the defendant in this case was the defendant in the 138 La. case, the 142 La. case, and the 143 La. case, upon which latter case, Mr. Justice O'Niell bases the opinion and decree here handed down by him.

The evidence the defendant relies on in all four cases is identical, and there is no proof of any possession of the land in contest, except that at the time of one sale, there was mentioned as being on the land two cows and four calves. This was about 1777, and
242 the record does not show any facts that would justify any court in concluding that the claimants, under the alleged Tarascon grant, had anything more than an inchoate title to the land, which they could have had confirmed by showing the requisite possession under the acts of Congress.

Fourth Error.

It was error for the court to hold that failure to reduce to writing and file with the Board of Commissioners, or other United States authority, for recordation in the land register, evidence of their claim of ownership of the land in contest, did not bar the reception and consideration of all evidence of title to the land covered by the alleged Tarascon grant, based on that grant.

The title of the plaintiffs is based on a grant to the State of Louisiana in 1849, and the title of the State of Louisiana, by mesne conveyances, has become vested in the Plaintiffs. Therefore, plaintiffs hold title under a grant by the United States.

No evidence of the claim, under the alleged Tarascon grant was ever reduced to writing and filed with any of the boards constituted by Congress to investigate land titles in Louisiana, or any other authority of the Land Office, in the land register of the United States.

The penalty for failure to do so is prescribed by Section 4 of the Act of Congress of March 2, 1805, which provides that the claim shall become void and forever thereafter barred, and that no evidence thereof shall thereafter be considered or admitted as evidence in any court of the United States against any grant derived from the United States.

In the case of Adams vs. Otterbach, 15 How. p. 535, the Supreme Court of the United States said:

"By Act of 2nd March, 1805, all persons claiming land under the French or Spanish government were required to file their claims in the Land Office."

In the case of city of New Orleans vs. Union Lumber Co. 145 La. p. 481, this court said:

"In such case, that of an inchoate title, the claimant was given six months time in which to record his claim with the United States Commissioner. Act Congress April 25, 1812, c. 67, 2 Stat. 713. This time was several times extended by subsequent acts. This notice by plaintiff's authors was not filed with the Commission, within the time therein limited, or within the various extensions of time made subsequent to the adoption of the act. It was never filed.

243 "These acts expressly provide that if claimants shall neglect to give notice of their claims in writing to the proper officers, or to cause to be recorded the written evidence of them, all their right, so far as the claim is derived from the government, shall become void, and forever thereafter be barred as evidence on the trial of title to said lands in any court of the United States against any grant which thereafter may have been derived from the United States." 145 La. p. 481.

In the case of Board of Directors vs. New Orleans Land Co., 138 La. p. 50, this court said:

"The concluding portion of Section 4, which refers to all and any grants, provides:

"'And if such person shall neglect to deliver such notice in writing of his claim, together with a plat as aforesaid, or cause to be recorded some written evidence of the same, all his right, so far as the same is derived from the two first sections of this act, shall become void, and forever thereafter be barred; nor shall any incomplete grant, warrant, order of survey, deed of conveyance, or other written evidence, which shall not be recorded as above directed, ever after be considered or admitted as evidence in any court of the United States, against any grant derived from the United States.'

"And so, in the case before us, we hold that the act of the French officer, Aubry, if he ever acted, was wholly unauthorized, and it was inoperative to vest any title in the ancestor of appellant, as that act would have been inconsistent with the existing relations between the kingdoms of France and Spain, particularly in view of the act of Con-

gress stated above to the effect that incomplete grants not recorded ar null and barred, and shall not be considered or admitted in evidence The inchoate or incomplete title set up by defendant has not been registered with any board of commissioners appointed by the United States which had authority to investigate and confirm land grants in Louisiana. The court cannot therefore receive in evidence the sug gested grant to Tarascon, or the survey tendered. Lobdell vs. Clark 4 La. Am. 99." 138 La., 50.

In the case of U. S. vs. D'Auterive, 10 How. 626, the Supreme Court of the United States said:

"The fourth section of the act of Congress, also quoted in the argument for the appellees, if applicable in any sense to their pretensions certainly adds nothing to their intrinsic force. This section is a simple requisition, that persons claiming lands within the Territory of Louisiana, by virtue of any legal French or Spanish grant made prior to the 1st day of October, 1800, may, and persons claiming lands in the said territories by virtue of any grant or incomplete title bearing date subsequently to the 1st day of October, 1800, shall, before the 1st day of March, 1806, deliver to the register of the land office or recorder of land titles within whose district the land may be, a notice in writing, stating the nature and extent of his claims, together with a plat of the tract or tracts so claimed; and, shall, also, on or before that day, deliver to the register or recorder, for the purpose of being recorded, every grant, order of survey, deed of conveyance, or other written evidence of his claim. This section then proceeds to declare, as a penalty for non-compliance with its directions, that all the rights of the claimants derived from the first two sections of the act (embracing all grants founded upon mere territorial occupation by France or Spain), shall become void, and forever after be barred and that no complete grant, warrant, order of survey, deed of conveyance, or other written evidence, which shall not be so recorded shall ever be considered or admitted as evidence in any court of the United States, against any grant derived from the United States But for the act of Congress of the 6th of February, 1835, entitled 'An Act for the final adjustment of claims to lands in the State of Louisiana,' the fourth section of the Act of 1805 would have operated as a complete bar to the claim of the appellees from the 1st day of March 1806." 10 How., pp. 626-627.

244 See also, discussion of this point in plaintiff's original brief

When evidence of the alleged Tarascon grant was offered in evidence, it was seasonably objected to, and should have been excluded. (See Tr. p. 74.)

Fifth Error.

It was error for the court to hold that there was any evidence in the record identifying the property described in the alleged Tarascon grant with the property claimed by plaintiffs and Intervenor. This

is fully discussed in plaintiffs' first supplemental brief, beginning on page 2.

In conclusion, we repeat there is no continued possession shown of the property described in the alleged Tarascon grant. The sole evidence of possession from Tarascon to the New Orleans Land Company is a statement in one of the deeds that there was sold with the property then being transferred, on May 14, 1877, two cows and four calves. There is nothing to show how long these cattle remained on the property. If it was of the same character as when surveyed by the United States Government in 1871, at which time the entire property was found to be deep cypress and palmetto swamps, we imagine they did not remain long.

Wherefore, it is respectfully prayed that a rehearing be granted, insofar as the alleged Tarascon grant is concerned, and that, after due legal proceedings had, the judgment appealed from be affirmed.

And for all general and equitable relief.

(Signed) WM. WINANS WALL,
do. CHAS. SCHNEIDAU,
do. ALEXIS BRIAN,
Attys. for Plaintiffs and Intervenor, Appellees.

(Endorsed:) No. 22950. Supreme Court of the State of Louisiana. Robert R. Brott et als., Plaintiffs and Appellees, vs. New Orleans Land Co., Defendant and appellant. (Petition for a rehearing.) Filed March 10th, 1922. (Signed) Percy J. Heines, Deputy Clerk.

245 *Rehearing Refused.*

(Extract from Minutes.)

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

New Orleans, Monday, April 24th, 1922.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors:

Oliver O. Provosty,
Chief Justice.
Ben C. Dawkins,
Winston Overton,
John R. Land,
Joshua G. Baker,
John St. Paul,
Associate Justices.
Absent: Charles A. O'Niell, Associate Justice.

No. 22950.

BROTT

vs.

NEW ORLEANS LAND COMPANY.

"By the WHOLE COURT:"

(Both applications are denied.)
It is ordered that the rehearings applied for in this case be refused.

246 *Certificate of the Clerk of the Supreme Court.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana do hereby certify that the foregoing two hundred and forty five pages contain a true copy of the proceedings had in the Civil District Court for the parish of Orleans in a certain suit wherein Robert R. Brott et al. were the plaintiffs and appellees and the New Orleans Land Company were the defendants and appellants, which record bears the number 85758 of the docket of that court; and, also, of the proceedings had in this the Supreme Court of the State of Louisiana on the appeal taken by the New Orleans Land Company, which appeal is now on the files of this Court under the number 22950.

I further certify that the foregoing transcript was made in accordance with the præcipe of counsel for both parties, which præcipe are now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of this court, at the city of New Orleans this the twenty first day of June, in the year of our Lord, one thousand, nine hundred and twenty two.

[Seal of the Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

247 *Certificate of the Chief Justice of the Supreme Court of the State of Louisiana.*

I, Olivier O. Provosty, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper

handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this the twenty first day of June, A. D. one thousand, nine hundred and twenty-two.

[Seal of Supreme Court of the State of Louisiana.]

OLIVIER O. PROVOSTY,
Chief Justice Supreme Court of the State of Louisiana.

248 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the Supreme Court of the State of Louisiana is the highest court of law in Louisiana, and that the Honorable Olivier O. Provosty is the Chief Justice of said Court and that his signature to the above certificate is genuine.

In testimony whereof I have hereunto set my hand and the seal of the Court aforesaid, at the city of New Orleans, this twenty first day of June, in the year of our Lord, one thousand nine hundred and twenty-two.

[Seal of Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

249 *Original Petition for Writ of Error on Behalf of New Orleans Land Company.*

To the Honorable O. O. Provosty, the Chief Justice of the Supreme Court, State of Louisiana:

The petition of the New Orleans Land Co. respectfully represents:
That in the matter of Robert R. Brott et al. vs. New Orleans Land Co., No. 22,950 of the docket of this Hon. Court, a final judgment has been rendered which dispossessed your Petitioner from certain lands and property, which they acquired through their vendors and predecessors since the year of 1772, and which had never been transferred by the Republic of France to the United States;
That the title of your Petitioner and of their vendees were protected in their ownership of said property by the terms of the treaty entered into between the United States and France, which treaty is reported in the 8th Statute at Large, page 202, the decision rendered by this Court in this case violates the terms of the said treaty;

That under the Statutes of the United States being the Swamp Land Grant by the United States to the State of Louisiana, the land which was claimed and held by the vendors of your Petitioner were specially exempted from any such grant and transfer to the State;

That on June, 3rd, 1874 and on April, 27th, 1874, the Register of the Land Office of the State of Louisiana, acting under authority of the laws of the State of Louisiana, issued two patents to Geo. F. Brott, the ancestor of the Plaintiffs herein, which act of the said Register of the Land Office was the exercise of an authority under the laws of the State of Louisiana, which was repugnant to the treaty aforementioned and law of the United States, known as the Swamp Land Grant, and the decision of this Court was in favor of the validity of said act, and under the judicial code Section 237, as amended by Act of Congress of 1916, can be re-examined and reversed or affirmed in the Supreme Court of the United States by writ of error.

That your Petitioner now annexes an assignment of error, showing the objections and mullities mentioned above addressed to the Supreme Court of the United States, sitting at Washington, D. C.

250 Your Petitioner further avers that the above described property was acquired by them by virtue of an order and decree of the Circuit Court of the United States rendered in the case of James W. Peake vs. City of New Orleans, No. 12,008 of the docket of the United States Circuit Court for the Eastern District of Louisiana, and that the Supreme Court as well as the lower Court which exercised their jurisdiction under the constitution and laws of the State of Louisiana were without jurisdiction, right and power to treat as null the valid judgment of the said United States Circuit Court;

Wherefore, Petitioner prays that a writ of error be granted herein returnable to the Supreme Court of the United States in thirty days from the date hereof, on Petitioner giving bond in such sum as may be required by the Court and according to law, and Petitioner prays that said bond may be accepted by your Honor and that citations issue herein according to law and Petitioner prays for general relief, etc.

N. O. June 12, 1922.

CHS. LOUQUE,
W. O. HART,
Attys.

Order.

Let, as prayed for, a writ of error be granted to Petitioner returnable to the Hon. The Supreme Court of the United States, within thirty days from the date hereof, on Petitioner giving bond according to law in the sum of Five Hundred Dollars, and,

Let citations issue as prayed for.

[Seal of Supreme Court of the State of Louisiana.]

OLIVIER O. PROVOSTY,
Chief Justice.

New Orleans, La. June 12, 1922.

I hereby accept service of the writ of error applied for and granted in this case and waive notice of the citations issued in this matter.

WM. WINANS WALL,
H.
Attorney for the Respondents.

[Endorsed:] No. 22950. Supreme Court Louisiana. Brott et al. vs. New Orleans Land Co. Petition for writ error. June 12, 1922. Paul E. Mortimer, Clerk.

251 *Original Assignment of Errors on Behalf of New Orleans Land Company.*

NEW ORLEANS LAND COMPANY

vs.

ROBERT R. BROTT et al.

Assignments of Error.

To the Honorable the Supreme Court of the United States:

The New Orleans Land Company, Plaintiff in error herein assign as error, apparent on the face of the record, that the judgment rendered by the Supreme Court of Louisiana, which is a final judgment, is contrary to the laws of the United States, to the treaties thereof, in maintaining as valid the authority of the Register of the Land Office, of the State of Louisiana, exercised under the laws of the State of Louisiana, in maintaining the validity of said acts of the Register of the Land Office, which exercise of authority was repugnant to the Constitution, treaties and laws of the United States, and the decision of the said Supreme Court of Louisiana was in favor of the validity of the acts of the said register of the Land Office, and should be reversed.

2. That it appears from the record that the title of the land from which your Plaintiff in error has been divested has been acquired through mesne conveyances prior to acquisition of Louisiana to the United States; that said titles were protected and were complete in all particulars before the acquisition of Louisiana by the United States; and that the same being claimed and held by your Petitioner and predecessors in title was not covered by the Swamp Land Grant made to the State of Louisiana in 1849, 9th Statute at Large, pages 352-353; that your Petitioner is therefore entitled to have said judgment reversed and the suit dismissed;

3. Your Petitioner further assigns as error that the Supreme Court of Louisiana disregarded and annulled to all intent and purposes the decree of the Circuit Court of the United States, which ordered the title of said land, under Act 30 of 1871, which created a trust on said land for the payment of work of drainage in the City of New Orleans, which was ordered to be done by the State of Louisiana; that

more then Two Million of Dollars were due contractors and that the foreclosure of the trust for the payment of said work gave a complete and perfect title to your Petitioner and their vendors
252 and was a full and complete defense against any attack made on said title by the Courts of this State;

Wherefore, Petitioner prays that the judgment of the Supreme Court of Louisiana be reversed abd set aside and that the suit be dismissed at the cost of the Defendants in error and your Petitioner prays for general relief, etc.

N. O., June 12, 1922.

CHS. LOUQUE,
W. O. HART,
Attys. for the New Orleans Land Co.

[Endorsed:] No. 22950. Supreme Court Louisiana. Brott vs. N. O. Land Co. Assignment of Errors. June 12, 1922. Paul E. Mortimer, Clerk.

253 *Copy of Bond for Writ of Error on Behalf of N. O. Land Co.*

STATE OF LOUISIANA,
City of New Orleans:

Be it known: That on the twelfth day of June, 1922, I, The New Orleans Land Co., as Principal and W. O. Hart as surety are held and firmly bound unto Robert R. Brott et al., Martha Brott and George O. Brott in the sum of five hundred dollars to be paid to the said Robert R. Brott et als., to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally and our heirs, executors and administrators firmly by these presents;

Whereas the above named principal have prosecuted a writ of error to the Supreme Court of the United States from a judgment rendered by the Supreme Court of Louisiana in the matter of New Orleans Land Co. vs. Robert O. Brott et als. No. 22,950 of the docket of said Court, and citation to appear in the Supreme Court in thirty days and to reverse the said judgment rendered in the above entitled action which became final on the 24th of April 1922;

Now, therefore the condition of the above obligation is such that if the above named principal shall prosecute his said writ of error to effect and answer all costs and damages, if they shal- fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Thus done and signed on the day and date above mentioned.

NEW ORLEANS LAND CO.,
By GEO. DENINGER,
Pres.

In the presence of
(Signed) CHAS. LOUQUE.
(Signed) W. O. HART.

W. O. Hart being duly sworn, says: That he resides in the parish of Orleans and that all of his debts and liabilities being paid he is fully worth over and above all his debts and property exempt from taxation, the sum of five hundred dollars, and that he is surety on the above bond.

(Signed) W. O. HART.

Sworn to and subscribed before me on this 12th day of June, 1922.

(Signed) FRANK W. HART,
[SEAL.] *Notary Public.*

The above bond is accepted and approved by

(Signed) OLIVIER O. PROVOSTY,
[SEAL.] *Chief Justice.*

(Endorsed:) No. 22,950. Brott et al. vs. N. O. Land Co. Bond for writ of error. Filed June 12th, 1922. (Signed) Paul E. Mortimer, Clerk.

254 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Robert R. Brott, and Martha Brott, Plaintiffs and George O. Brott Intervenor against the New Orleans Land Company, Defendant, No. 22950 of the docket of said Court, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause
255 of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said New Orleans Land Company as by said complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and pro-

ceedings aforesaid being inspected, the said Supreme Court ma cause further to be done therein to correct that error, what of righ and according to the laws and customs of the United States shou be done.

Witness, the Honorable William H. Taft, Chief Justice of th Supreme Court of the United States, the 12th day of June in th year of our Lord one thousand nine hundred and twenty-two.

[Seal of the Supreme Court of the State of Louisiana.]

H. J. CARTER,
Clerk of the District Court of the United States for the Eastern District of Louisiana.

Allowed by
OLIVIER O. PROVOSTY,
Chief Justice.

[Endorsed:] No. 22950. Supreme Court of La. New Orlea Land Co., Plaintiff-in-error, vs. Robert R. Brott et al., Defendants-i error. Writ of Error. Filed June 12, 1922. Percy J. Heines, D Clerk.

256 *Cross-petition for Writ of Error on Behalf of Plaintiffs a Intervenor, Robt. R. Brott et al.*

Supreme Court of the State of Louisiana.

No. 22950.

ROBERT R. BROTT et als., Plaintiffs and Appellees,

versus

NEW ORLEANS LAND COMPANY, Defendant and Appellant; GEOR O. BROTT, Intervenor and Appellee.

Cross-petition for Writ of Error.

To the Honorable the Supreme Court of the State of Louisiana:

The cross-petition of Robert R. Brott, Mrs. Martha J. Brott, wido of George F. Brott, deceased, and George O. Brott, plaintiffs a intervenor, respectively, with respect, represents:

1. That defendant and appellant has obtained an order for a w of error to have this case reviewed by the Supreme Court of t United States.

2. That petitioners are aggrieved by the judgment herein re dered, and desire to take this cause, by writ of error, to the Supre Court of the United States, to have the judgment herein render reviewed.

3. That in this case there is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision of this court is against their validity; that the Supreme Court of Louisiana is the highest court in Louisiana; that petitioners have exhausted all of their remedies, and that the judgment rendered herein by the Supreme Court of the State of Louisiana is now final.

Wherefore, petitioners pray that this court may be pleased to grant them a writ of error, without supersedeas, to the Supreme Court of the United States, upon their executing bond, in such sum as the court may fix, returnable to said court at Washington, D. C., according to law.

WM. WINANS WALL,
Attorney for Petitioners.

257 *Order.*

Let a writ of error issue herein, as prayed for, returnable, according to law, upon plaintiffs in error furnishing bond, conditioned according to law, in the sum of not less than five hundred Dollars.

Done and Signed officially in Chambers, this 14 day of June, 1922, at New Orleans, La.

[Seal of the Supreme Court of the State of Louisiana.]

OLIVIER O. PROVOSTY,
Chief Justice Supreme Court of Louisiana.

Service accepted and issuance of citations & writs in the above case waived.

CHS. LOUQUE,
Atty. for N. O. Land Co.

257½ [Endorsed:] No. 22950. Supreme Court of the State of Louisiana. Robert R. Brott, et als., Plaintiffs and Appellees, versus New Orleans Land Company, Defendant and Appellant, George O. Brott, Intervenor and Appellee. Cross-petition for writ of error. Wm. Winans Wall, Attorney. Filed June 14, 1922. Percy J. Heines, Dy. Clerk.

258 *Assignment of Errors on Behalf of Brott et als.*

Supreme Court of the State of Louisiana.

No. 22950.

ROBERT R. BROTT et als., Plaintiffs and Appellees,

versus

NEW ORLEANS LAND COMPANY, Defendant and Appellant; GEORGE O. BROTT, Intervenor and Appellee.

Assignment of Errors.

Filed May 26, 1922. Paul E. Mortimer, Clerk.

Now, into court, come Robert R. Brott, Mrs. Martha J. Brott widow of George F. Brott, deceased, and George O. Brott, plaintiffs intervenor and plaintiffs in error, through Wm. Winans Wall and Charles Schneidau, their attorneys, and, with respect, say:

That in the record, proceedings and decree in the above entitled and numbered matter, there is manifest error in this, to wit:

(1) The court erred in holding that Charles Philippe Aubry, Knight of the Royal and Military Order of St. Louis, Commandant of the King of France in Louisiana, in 1766, could make a valid or complete grant of land in Louisiana, in 1766, four years after the Treaty of Versailles was signed and two years after it was published.

(2) The court erred in holding that the null and void grant made by Aubry, in 1766, was ever, in any manner, confirmed by the King of Spain or his representatives, or that a complete title became vested in Carlos Tarascon, or his successors in title, by a possession, which was never made the basis of a formal application for title by the possessor.

(3) The court erred in holding that the grant by Aubry to Tarascon, which was based solely on territorial occupation, did not require confirmation, in accordance with the provisions of the Act of Congress of March 2, 1805, and subsequent cognate acts.

(4) The court erred in holding that evidence of the
259 alleged grant by Aubry to Tarascon, in 1766, could be received in opposition to a grant by the United States, because neither the grant, nor any evidence thereof, nor any claim of ownership or possession thereunder, was ever reduced to writing and filed with the board of commissioners created by the Act of Congress of March 2, 1805, or any board appointed for the investigation of land titles in Louisiana, by any subsequent cognate act.

(5) The court erred in holding that the claimants, under the null and void grant by Aubry, in 1766, were entitled to be recognized

as the owners of the property, by reason of the Treaty of Paris, without observing the procedure necessary to secure a confirmation of their titles by Act of Congress, in accordance with Act of March 2, 1805, and subsequent cognate acts, dealing with the same subject.

Wherefore, the said Robert R. Brott, Mrs. Martha J. Brott, widow of George F. Brott, deceased, and George O. Brott, plaintiffs, intervenor and plaintiffs in error, pray that the final judgment or decree of the Supreme Court of Louisiana rendered in this cause be annulled, avoided and reversed, with costs, in so far as it amends the judgment of the Civil District Court for the Parish of Orleans, and gives effect to the title of the defendant held by mesne conveyances, under the alleged grant by Aubry, pretending to act as the representative of France, to Carlos Tarascon.

And for costs and general relief.

WM. WINANS WALL,
CHAS. SCHNEIDAU,
Attorneys for Plaintiffs, Intervenor, and Plaintiffs in Error.

280 *Copy of Bond on Behalf of Brott et al.*

Supreme Court of the State of Louisiana.

No. 22950.

ROBERT R. BROTT et als., Plaintiffs and Appellees,

versus

NEW ORLEANS LAND COMPANY, Defendant and Appellant; GEORGE O. BROTT, Intervenor and Appellee.

Bond.

Know all men by these presents that we, Robert R. Brott, Martha J. Brott, widow of George F. Brott, and George O. Brott, plaintiffs and intervenors, appellees, in the above entitled and numbered cause, as principals, and Wm. Winans Wall, of the City of New Orleans, State of Louisiana, as surety, are held and firmly bound unto the New Orleans Land Company, defendant and appellant, its successors and assigns, in the sum of One Thousand Dollars ($1,000.00), lawful money of the United States, to be paid to said New Orleans Land Company, and its respective successors and assigns, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally and each of our heirs, executors and administrators by these presents.

Sealed with our seals and dated this 15th day of June, 1922.

Whereas, the above named principals have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment of the Supreme Court of the State of Louisiana, in part, in the above entitled and numbered cause; judgment rendered and a rehearing refused on the 24th day of April, 1922:

Now, the condition of the above obligation is such that, if the above named principals shall prosecute their appeal to effect and answer all costs and damages, which may be recovered, if they fail to make good their plea, then, and in that case, this obligation shall be void; otherwise to remain in full force and effect.

(Signed) MRS. MARTHA J. BROTT,
do. ROBERT R. BROTT,
do. GEORGE O. BROTT,
By WM. WINANS WALL,
Atty.
do. WM. WINANS WALL.

261 *Affidavit.*

Wm. Winans Wall being duly sworn, says: that his debts and liabilities being paid, he is fully worth the sum of $1,000.00, and that he resides in the Parish of Orleans.

(Signed) WM. WINANS WALL.

Sworn to and subscribed before me at New Orleans, La., on this 15th day of June, 1922.

(Signed) CHARLES SCHNEIDAU, [SEAL.]
Notary Public.

New Orleans, La., June 17th, 1922.

Accepted and Approved:
(Signed) OLIVIER O. PROVOSTY,
Chief Justice Supreme Court of Louisiana.

(Endorsed:) Supreme Court of the State of Louisiana. Robert O. Brott, Plaintiffs and appellees, versus New Orleans Land Company, defendant and appellant. George O. Brott, Intervenor and appellee. Bond. Filed June 16th, 1922. (Signed) Paul E. Mortimer, Clerk.

262 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Louisiana, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Robert R. Brott, et als., versus New Orleans Land Company, George O. Brott, Intervenor, No. 22,950 of the docket of your said court, wherein Robert R. Brott, Martha J. Brott, and George O. Brott, are Plaintiffs, Intervenor, Appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the

ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or
263 commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Robert R. Brott, Martha J. Brott and George O. Brott, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, the 17th day of June, in the year of our Lord one thousand nine hundred and twenty-two.

[Seal of the District Court of the United States for the Eastern District of Louisiana.]

H. J. CARTER,
Clerk of the District Court of the United States for the Eastern District of Louisiana.

Allowed by

[Seal of Supreme Court of the State of Louisiana.]

OLIVIER O. PROVOSTY,
Chief Justice Supreme Court of Louisiana.

264 [Endorsed:] Original. No. 22,950. Robt. R. Brott et al., Plaintiff-in-error, vs. New Orleans Land Co., Defendants-in-error. Filed June 16, 1922. Paul E. Mortimer, Clerk.

265 *Certificate of Lodgment.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that there was lodged with me as such clerk on June 12th, 1922, in the matter of New Orleans Land Com-

pany, plaintiff-in-error, vs. Robert R. Brott et als., defendants-in-error:

First. Petition for writ of error, the original of which is herein set forth.

Second. The original assignment of errors as herein set forth.

Third. Bond for writ of error, a copy of which is herein set forth.

Fourth. The original writ of error as herein set forth.

Fifth. Two copies of the writs of error; one to be served on the defendants-in-error, and one for the files of my office.

I further certify that there was lodged with me, as such clerk, on June 14th, 1922 in the matter of Robert R. Brott et al. plaintiffs-in-error versus the New Orleans Land Company, defendants-in-error:

First. The original cross-petition for writ of error as herein set forth.

Second. The original assignment of errors, filed May 26th, 1922, as herein set forth.

Third. Bond for writ of error filed June 16th, 1922, a copy of which is herein set forth.

Fourth. The original writ of error as herein set forth.

Fifth. Two copies of the writ of error; one copy for the defendant-in-error and one copy to be lodged in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of this Court at the city of New Orleans this the 21st day of June, one thousand nine hundred and twenty-two.

[Seal of Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

266 & 267 *Return to Writ.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the proceedings and record in the within entitled case, together with all things concerning the same, made in accordance — the præcipe of counsel in this cause.

In testimony whereof I have hereunto set my hand and affixed the seal of this court at the city of New Orleans, this the 21st day of June, A. D. one thousand nine hundred and twenty two.

[Seal of Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of the State of Louisiana.

268 *Præcipe of Counsel for New Orleans Land Company.*

Supreme Court of the State of Louisiana.

No. 22950.

ROBERT R. BROTT et als., Plaintiffs & Appellees,

vs.

NEW ORLEANS LAND COMPANY, Defendant & Appellant.

Præcipe for Transcript.

Mr. Paul E. Mortimer,
Clerk Supreme Court of Louisiana.

DEAR SIR:

In the preparation of the transcript in the above entitled case for the Supreme Court of the United States, in connection with the writ of error herein issued by the New Orleans Land Company, you will please copy in addition to the præcipe filed with you by the Attorney for Robert R. Brott, et als., the following documents:

1st. The exception of prescription filed in May 8, 1908;

2nd. The answer of Geo. O. Brott to the petition of intervention;

3rd. The transfer by Richardson to Brott, page 39 printed copy;

4th. Patent No. 1871 to Geo. F. Brott, pages 41-42 printed transcript.

5th. Transfer of Andrew W. Smyth to Geo. F. Brott, page 43 of the printed transcript.

6th. Note of evidence from pages 45 to 71, printed transcript; Exhibit marked "P" 7; Swampland pages 72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87.

7th. The documents and deeds from pages 88 to 149;

8th. Judgment Supreme Court;

9th. Petition for rehearing by the New Orleans Land Co.;

10th. Proceedings in the United States Circuit Court, 12,008 of said docket in equity, being James W. Peake vs. City of New Orleans.

11th. The petition of the New Orleans Land Co., to the Chief Justice of the Supreme Court of La., for writ of error;

12th. The assignments of error;

13th. The citation and the bond;

14th. The writ of error allowed by the Chief Justice.

269 Remaining,
Very respectfully,
(Signed) CHAS. LOUQUE,
Atty.

Endorsed on reverse: "Præcipe N. O. Land Co.

270 *Præcipe of Counsel for Brott et al.*

Supreme Court of the State of Louisiana.

No. 22,950.

ROBERT R. BROTT et al., Plaintiffs and Appellees,

versus

NEW ORLEANS LAND COMPANY, Defendant and Appellant; GEORGE O. BROTT, Intervenor and Appellee.

Præcipe for Transcript.

Mr. Paul E. Mortimer,
Clerk Supreme Court of Louisiana,
New Orleans, La.

DEAR SIR:

In the preparation of the transcript in the above numbered and entitled cause, for the Supreme Court of the United States, in connection with the writ of error issued herein, you are hereby instructed to include, on behalf of Robert R. Brott, Martha J. Brott and George O. Brott, plaintiffs and Intervenor, Appellees, only the following pleadings, documents and testimony:

1. Petition.
2. Answer.
3. Petition of Intervention.
4. Answers to petition of intervention.
5. Judgment of the Civil District Court.

6. Rule for new trial in Civil District Court.

7. Patent of the State of Louisiana, No. 1889.

8. Note of evidence, taken on behalf of plaintiff, in open court on the 9th of November, 1915, exclusive of the testimony of H. D. Stearns.

9. All of the documentary evidence, offered on behalf of plaintiffs and intervenor, appellees, except depositions of Robert R. Brott and Martha J. Brott and testimony of George O. Brott and Henry D. Stearns, appearing on said note of evidence in the transcript at pages 58 to 61, both inclusive.

10. Note of shorthand Reporter, page 73 of the transcript, and copy of the notes of evidence in the matter of the Board of Directors of the Public Schools of New Orleans vs. New Orleans Land Company, beginning on page 73 of the transcript, to and inclusive of the agreement at page 76 of the transcript.

11. Opinion and decree of the Supreme Court of Louisiana.

12. Petition for rehearing by Robert R. Brott, Martha J. Brott and George O. Brott, Plaintiffs and Intervenor, Appellees.

13. Refusal of rehearing by Supreme Court.

14. Assignment of errors by Robert R. Brott, Martha J. Brott and George O. Brott, Plaintiffs and Intervenor, Appellees.

15. Petition for writ of error by Robert R. Brott, Martha J. Brott and George O. Brott, plaintiffs and Intervenor, Appellees, and order allowing same.

16. Bond of Robert R. Brott, Martha J. Brott and George O. Brott.

17. Citations, answer to writ of error or waiver of service.

18. Writ of error.

Respectfully,

(Signed) WM. WINANS WALL,
Attorney for Plaintiffs and Intervenor, Appellees.

71

Affidavit.

Before me, the undersigned authority, personally came and appeared, Wm. Winans Wall, who being duly sworn, deposes and says: that he has served copy of the foregoing præcipe for transcript on the New Orleans Land Company, through W. O. Hart and Charles Louque, its attorneys, on the 17th day of June 1922.

(Signed) WM. WINANS WALL.

Sworn to and subscribed before me at New Orleans, La., June 17th day *of June,* 1922.

(Signed) PAUL E. MORTIMER,
[SEAL.] *Clerk Supreme Court of La.*

(Endorsed:) Supreme Court of the State of Louisiana. Robert O. Brott et al., Plaintiffs and Appellees, versus New Orleans Land Company, defendant and appellant. George O. Brott, Intervenor and Appellee. Præcipe for Transcript. Filed June 17th, 1922. (Signed) Paul E. Mortimer, clerk.

Endorsed on cover: File Nos. 29,002, 29,047. Louisiana Supreme Court. Term No. 452. New Orleans Land Company, plaintiff in error, vs. Robert R. Brott, Martha J. Brott, and George O. Brott. (Filed June 29th, 1922.) Term No. 497. Robert R. Brott, Martha J. Brott, and George O. Brott, plaintiffs in error, vs. New Orleans Land Company. Filed July 25th, 1922. File Nos. 29,002, 29,047.

SUPREME COURT OF THE UNITED STATES

No. 452–497

OCTOBER TERM, 1922

NEW ORLEANS LAND CO.,
Plaintiff in Error,

versus

R. R. BROTT, MARTHA BROTT AND GEO. BROTT.
Cross Plaintiffs in Error.

Brief on Behalf of the New Orleans Land Co., Plaintiff in Error.

SYLLABUS.

When Congress has excepted lands **"claimed or held"** by individuals from its donation of swamp lands to the State of Louisiana, this exception should be respected and upheld by the Courts.

By reserving the rights of third persons in his approval of selection of swamp lands, the Secretary of the Interior left the question of whether they are claimed or held by individuals open to the Courts for investigation.

The issuance of a State land patent is an authority exercised under a State law, and when repugnant to an act of Congress, gives to the Supreme Court of the United States jurisdiction to review the decision of a State Supreme Court which maintains the validity of the State land patent.

The sale of land when ordered by a United States Court vested with the jurisdiction, treated as an absolute nullity by a State Court, is a proper subject for the jurisdiction of the Supreme Court of the United States.

To disregard such an attack is to bring the judiciary of the United States into disrepute, and rank it as inferior to the State Courts.

This is a suit to recover land, wherein plaintiffs' title, Brott et als., is based on a State patent, disposing of swamp land, supposed to have been granted by Congress to the State of Louisiana, under the Swamp Land Grant of 1849. —9th Statutes at Large, p. 452.

The answer sets up: "that the land claimed is **'especially excepted from the donation made of swamp and overflowed lands to the State of Louisiana by the Acts of Congress of 1849 and 1850,** and your respondents especial-

ly plead the **protection** of the treaty of 1803 and the two acts of Congress as a protection to the title now set up!" (Rec., pp. 7 and 8, top).

In answer to the petition of intervention claiming the same land under the same State Patents, the New Orleans Land Co. averred:

"That the grant of the swamp land made by the government of the United States to the State of Louisiana in 1849, did not include property owned or claimed by indivduals." (Rec., p. 13.) The State Court recognized the validity of the State patent and awarded the land to plaintiffs. So that in this suit **there is drawn in question the validity of an authority exercised under a State law,** to-wit: the issuance of a State land patent, attacked on ground of its being repugnant to the treaty and laws of the United States, and the decision of the State Supreme Court was in favor of the validity of the State patent.

A writ of error was granted by the Chief Justice of the State Supreme Court to the New Orleans Land Co. returnable to this Court under the Act of Congress which provides for such a writ, "where is drawn in question the validity "of an authority exercised by any State, on the ground of "their being repugnant to the Constitution, treaties or "laws of the United States, and the decision is in favor of "their validity." (R. S., 1002).

The authority granted to the Secretary of the Treasury under the Act of 1849 is to approve the list of swamp lands

"so far as they are not claimed or held by individuals." (9th Statutes at Large, p. 352).

The list, No. 16 of swamp land involved in this suit, is found at Rec., p. 37;—it includes sections 15-21-22.

This list contains the following approval:

"Department of the Interior. April 10, 1874. The foregoing list of Swamp Selections is hereby approved, subject to any valid legal rights that may exist to any of the tracts therein described.

"(Signed) B. R. COWEN,
"Acting Secretary." (R., 38.)

This same qualified approval as to other lands is found at R., 36.

The defendants are not, therefore, concluded by the action of the Treasury, now Interior. The question is left open for investigation by the judiciary.

The Supreme Court of Louisiana found that a valid Spanish grant existed as to the Terascon tract; eight arpents front on Bayou St. John by forty in depth, and rejected plaintiff's claim as to that tract, which is also in dispute in this case. (R., 110.)

As regards the de Morant property, adjoining the Terascon grant, the Court found as a fact that a title executed before a Spanish notary, Pedro Pedesclaux, with a survey made by a Spanish surveyor, Don Carlos Trudeau, was

extant in 1799 (R., 112), which fact was more than required by the Act of Congress, inasmuch as to "own" is more than "claimed or held," and includes "claimed."

However, the Court did not consider the law of evidence, which presumes a grant after twenty years of possession. But not finding direct evidence of a grant, declared in favor of the State patent. (R., 112.)

The history of the State of Louisiana explains and gives us the reason why Congress excluded from the transfer to the State of Louisiana property "claimed or held" by individuals.

Under the Spanish regime in existence in Louisiana, before the United States acquired this territory from France, all kinds of titles were in existence, some complete and some inchoate.

In the treaty of 1803, entered into between the United States and France, *8th Statutes at Large, p. 202*, it is provided:

> "The inhabitants of the ceded territory * * * shall be maintained and protected in the free enjoyment of their liberty, property and the religion they profess." *8th Statutes at Large, p. 202.*

Chief Justice Marshall said:

> "The term property, as applied to lands, comprehends every specie of title, inchoate or complete."
>
> *Soulard v. U. S., 4h Peters, 510.*

"By the term property, as applied to land, all titles are embraced, legal or equitable, perfect or imperfect."

Bryan v. Kennet, 113 U. S., 192; 10 Wall., 224-242; 19 Wall., 138-141; 21 Wall., 660.

"The right of property then is protected and secured by treaty, and no principle is better settled in this country than that an inchoate title to lands is property."

Chief Justice Marshall, in *Delassus v. the U. S., 9 Peters, 133.*

"Treaties are the law of the land and a rule of decision in all Courts."

2 Peters, 133; 12 Peters, 438-439; Strother v. Lucas.

"A treaty is in its nature a contract between two countries, not a legislative act. Our Constitution declares a treaty to be the law of the land."

Foster & Elam v. Neilson, 2 Peters, 314.

It is not in the power of Congress to pass any law which would conflict with the provisions of a treaty. One party to a contract cannot, by his own act, change or alter the same. This principle applies to nations.

Reverting to the Act of Congress donating the swamp lands to the State of Louisiana, we wish to call your Honors' attention to the fact that the de Morant tract was not only publicly claimed by a notarial act of sale of 1799, but the actual wording of the deed, referred to by the Supreme Court of Louisiana, contains the proof that the

property was actually occupied and cultivated, and was, therefore, **held** by the vendor, as well as the purchaser.

The act of sale recites that the purchaser, Jose Dupard, accepts the delivery and says, "I obligate myself to satisfy and to pay the said one hundred and fifty pesos, and without delays, **together with the charges of the tillage.**" (R., 74.)

The Century Dictionary defines tillage as "the operation, practice or art of tilling land or preparing it for seed, and keeping the ground free from weeds, which might impede the growth of crops; cultivation; culture; husbandry."

The Supreme Court of Louisiana, in the case of *State of Louisiana v. New Orleans Land Co.*, found that the Terascon grant was a plantation, and that the de Morant property was also a plantation, going, therefore, to show possession in the grantees. *143 L., 870.*

> "* * * the recitals in the deeds, that what "was sold was a plantation, a 'habitation,' indi- "cates unmistakably that the front part was act- "uall occupied. There was evidently a house upon "the land, and from the description, it is also evi- "dent, that the lands on each side were also " 'plantations.' "
>
> *143 La., 870, State v. N. O. Land Co.*

The Act of Congress protects and excepts from the transfer of swamp lands to the State such lands that are **claimed or held** by individuals. In this case the land is

claimed **and** held by individuals, thus putting it doubly on the list of property not transferred to the State.

It was error in the Supreme Court of Louisiana to have required the defendant to show a complete grant, when the only question at issue was whether the property **was claimed or held** by individuals; if so, this was sufficient to defeat the title set up by the plaintiffs.

Your Honors are aware of the fact that under the Spanish law **"property could be acquired by prescription against the Crown."**

Partidas 3, title 29, No. 18.
9th La. An., 137, Pepper v. Dunlap.
143 La., 870, State v. N. O. Land Co.
175 U S., 509, U. S. v. Chave.
9 Peters, 760, Mitchell v. U. S.
12 Peters, 411, Strother v. Lucas.
White's Recopilation, Vol. 2, p. 734, p. 239, Art. 20.

The evidence in the record tends to prove that the defendants and their transferers claimed and held the property in dispute, under the Spanish regime, for more than thirty years and had the right to set up that defense, which was sufficient to show that the State of Louisiana did not acquire title to their property from the United States, and, therefore, the State could give no title to the plaintiffs.

This suit is a petitory action. The plaintiffs allege in their petition,

> **"That the New Orleans Land Co., a corporation, domiciled in the City of New Orleans,** is, without color or right, **claiming the ownership,** and is unlawfully **in possession** of the said above-described property.* * *" (R., 5.)

It is a rule of universal jurisprudence that the plaintiff in a petitory action can only recover on the strength of his own title, and not on the weakness of his adversary's.

Inasmuch as the property in dispute has been claimed and held publicly by the defendants and their transferers since and previous to September 10, 1799 (R., 75), and is especially excepted from the donation of swamp land to the State of Louisiana by the Act of Congress of 1849, plaintiff cannot recover, and the judgment of the Supreme Court of Louisiana must be reversed and the suit dismissed.

II

There is another ground of defense which is within the jurisdiction of this Honorable Court, and which is brought to your attention by the assignment of errors (Rec., p. 135, Sec. 3.).

The defendants derive their title from a judgment and decree of sale rendered by the late Circuit Court of the United States for the Eastern District of Louisiana, duly confirmed by both the lower Court and by the Court

of Appeal for the Fifth Circuit. (Rec., p. 106, Sec. 99.) *38 Fed., 779, 152 Fed., 74, Peak v. New Orleans.*

The New Orleans Land Co. acquired this property from Dr. Gaudet, who bought at the receiver's sale, to foreclose a trust created by the State of Louisiana to pay for work of drainage ordered by the State in the City of New Orleans. See Act of 1871, No. 30, Section 9.

The land in dispute was acquired by Mrs. De Morant from Jose Dupart (Rec., p. 75), and by the Drainage Board from Mrs. DeMorant at sheriff's sale. (Rec., p. 76.) The Drainage Board was, under the Act of 1871, No. 30, ordered to transfer the same to the City of New Orleans to be held in trust for the payment of drainage work ordered by that State under said act.

This Court, in the case of *Peak v. City of New Orleans, 139 U. S., 348,* reviewed the effects of the Act of 1871, No. 30, found that $2,242,514.78 were due for the work performed. That the judgment sought to be enforced was made payable out of the drainage fund, page 348; that the City of New Orleans was not a voluntary trustee and could not be made liable, personally, for the deficiency in the trust fund; the judgment of this Court dismissed the bill. The result of this decision was that Wm. Peake brought another bill to enforce the trust and collect his drainage warrants from the trust property.

The sale under which the plaintiffs in error hold was the result of these proceedings. The proceedings are found in Rec., pp. 78 to 110.

We commend the decision rendered in *139 U. S., 348*, because it gives the history of the drainage litigation and of the title acquired by the defendants.

The Act of 1871 creating the trust in favor of the contractor for the work of drainage, burdened the property in dispute so that the Register of the Land Office could not, in 1874, give a patent for the land so burdened free from the prior trust.

When the Circuit Court foreclosed the prior trust the subsequent alienation by the Register of the Land Office was simply canceled and wiped out.

This Court was established for the purpose of maintaining the acts of the United States Courts when acting within the scope of their jurisdiction and maintain the integrity of the judicial system of the United States.

As a matter of fact, the Act of 1871 goes further than above stated and declares that the property acquired and held by the Drainage Board is to be held by the City of New Orleans in fee simple, should it not be required for drainage. So that the State herself, through its Legislature, disposed of the property and transferred it to the City of New Orleans in 1871, and, of course, the Register

of the Land Office could not dispose of same, in 1874, free from the trust, since the State had already, in 1871, three years before, disposed of the property.

Therefore, there is no reason why this Court should not uphold the order of sale of the United States Court and reverse the decision of the State Court treating that sale and judgment as an absolute nullity and giving the property to the plaintiff, who derives his title from the State when the State had previously created a trust on it and disposed of it to the City of New Orleans.

The cross-writ of error does not contest any of the arguments made in the foregoing pages.

The whole contention of plaintiffs is based on acts of Congress which are supposed to destroy the title of defendants in utter disregard of their treaty rights and in opposition to their Spanish title.

But, even if their contention were true, the Swamp Land Grant of 1849, under which the State claims, excepts the property in litigation from the transfer to the State, because it was and is claimed and held by defendants.

The Allard-Beugnot and Alpuente tracts cannot be claimed by plaintiffs because these two tracts have been recognized and approved by the United States Government. The Allard-Beugnot Receiver and Register 82 and the Alpuente R. & R., 223. These two tracts certainly

come within the exception contained in the Swamp Land Grant of Congress of property "claimed or held by indi-"viduals."

The inconsistency of the decision of the Supreme Court disregarding the survey of Sulakosky as to the Terascon grant and then claiming to be bound by it, for another tract, does not prevent this Court from laying down the principle we are contending for, that the act of Congress should be respected and enforced, and any property claimed or held by individuals was not transferred to the State under the Swamp Land Grant of 1849.

We, therefore, submit that the decision of the Supreme Court of Louisiana should be reversed.

Respectfully submitted,

CHAS. LOUQUE,
Of Counsel for Plaintiffs in Error,
the N. O. Land Co.

N. O., Sept. 6, 1923.

Supreme Court of the United States

OCTOBER TERM, 1923

No. 64

NEW ORLEANS LAND COMPANY, Plaintiff in Error

versus

ROBERT R. BROTT, MARTHA J. BROTT AND GEO. O. BROTT

No. 86

ROBERT R. BROTT, MARTHA J. BROTT AND GEO. O. BROTT, Plaintiffs in Error

versus

NEW ORLEANS LAND COMPANY

IN ERROR TO THE SUPREME COUR OF LOUISIANA

Brief on Behalf of Robert R. Brott, Martha J. Brott and Geo. O. Brott, Defendants in Error in Case No. 64 and Plaintiffs in Error in Case No. 86.

WM. WINANS WALL,
CHARLES SCHNEIDAU,
Attorneys.

Hauser Ptg. Co., "The Legal Printers," 720 Poydras St., New Orleans.

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LIST OF CASES CITED.

INDEX.

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Supreme Court of the United States

OCTOBER TERM, 1923

No. 64

NEW ORLEANS LAND COMPANY, Plaintiff in Error
versus
ROBERT R. BROTT, MARTHA J. BROTT
AND GEO. O. BROTT

No. 86

ROBERT R. BROTT, MARTHA J. BROTT AND
GEO. O. BROTT, Plaintiffs in Error
versus
NEW ORLEANS LAND COMPANY

IN ERROR TO THE SUPREME COURT OF LOUISIANA

Brief on Behalf of Robert R. Brott Martha J. Brott and Geo. O. Brott, Defendants in Error in Case No. 64 and Plaintiffs in Error in Case No. 86.

SYLLABUS

A grant of land, in 1766, by Aubry, who seized the government of the territory of Louisiana, on the death

of D'Abadie, the French governor, in 1764, was null and void.

United States vs. Reynes, 9 Howard 148.

Davis vs. Police Jury of Concordia, 9 Howard 148.

United States vs. D'Auterive, 10 Howard 609.

Pillerin et al. vs. United States, 13 Howard 9.

United States vs. Ducros, 15 Howard 38.

Board of School Directors vs. New Orleans Land Company, 138 La. 32.

Leader Realty Company vs. Lakeview Land Company, 141 La. 177.

The fact that a null and void grant from Governor Aubry was transferred by private persons before a Spanish notary (scrivenor) would not constitute such a recognition and confirmation by the Spanish authorities, as to sever the land described in the grant from the public domain.

United States vs. King, 3 Howard 773.

United States vs. Ducros, 15 Howard 38.

Board of School Directors vs. New Orleans Land Company, 138 La. 32.

Union Lumber Company vs. City of New Orleans, 145 La. 482.

A complete title to royal land could not be acquired by prescription under the Spanish law.

Royal Ordinance of 1754.

Ordinances of Morales of 1799.

By the treaty of Paris, the United States merely stepped into the shoes of the French and Spanish govern-

ments with reference to their obligations to the inhabitants of Louisiana.

Strother vs. Lucas 12 Peters 430.

The right to have an imperfect or inchoate title perfected or completed lay in the clemency of the United States. By section 2, of act of Congress March 2, 1805, chapter XXVI, holders of titles, based on territorial occupation, only, were given the right to obtain grants where they were actually possessing and cultivating the land on December 20th, 1803. Section 4 of the same act required the presentation to and registry of the claim by the Board of Commissioners, before March 1806, under penalty of forfeiture of all rights based on the act and an inhibition against any court in the United States considering such claim as evidence against a grant thereafter emanating from the United States.

No complete grant, order of survey, conveyance or other evidence of title to land in Louisiana emanating from Spain or France which has not been presented for registry to some one of the boards created by Congress to investigate land titles in Louisiana can be considered or admitted as evidence, in any court of the United States against a grant derived from the United States.

Act of Congress, March 2, 1805, Chapter XXVI Sec. 4.

Act of Congress April 12, 1812, Chapter LXVII, Sec. 4

Strother vs. Lucas, 12 Peters 430.

Lobdell vs. Clark, 4 La. Ann. 99.

Board of Directors vs. N. O. Land Company, 138 La. 50

Union Lumber Company vs. City of New Orleans, 145 La. 482.

Hall vs. Root, 19 Ala. 379.

Estrada vs. Murphy, 19 Cal. 269.

Minturn vs. Brower, 24 Cal. 644.

Guyol vs. Choteau, 9 Mo. 548.

MAY IT PLEASE YOUR HONORS:

The facts in this case are stated very explicitly and accurately by the Supreme Court of Louisiana, and that statement is adopted by the writers of this brief as the best that could be made.

"This is a petitory action, in which the plaintiffs and an intervenor, being the widow and heirs of George F. Brott, deceased, claim title to fractional sections 15, 21 and 22, in T. 12 S., R. 11 E. The land, being in the corporate limits of the City of New Orleans, is also described as city blocks and squares, according to a map of that part of the city.

"George F. Brott acquired title to the fractional section 21, containing 97.48 acres, by patent from the State of Louisiana, dated the 27th of April, 1874, and bought the fractional sections 15 and 22, containing 101.82 acres, from Dr. Andrew W. Smyth, who had acquired title from the State by patent dated June 3rd, 1874. Brott sold a half interest in the three fractional sections to James G. Richardson, who retroceded it to Brott on the 15th of June, 1875. The land was acquired by the State by virtue of the swamp land grant of March 2nd, 1849 (9 U. S. Statutes at Large p. 352), was selected and surveyed, and the selection was approved on the 10th of April, 1874.

"Fractional sections 15 and 22 front on the west bank of Bayou St. John, section 15 being immediately north of and adjoining section 22, and frac-

tional section 21 being immediately west of and adjoining section 22. Section 15 is bounded on the north by the Alexander Milne grant, O. B. 164 (section 113), and on the west by section 16, which was the subject of the contest in the suit of the *Board of Directors vs. New Orleans Land Co.*, 138 La. 32, 70 South., 27, and in *State vs. New Orleans Land Co.*, 143 La. 858, 79 South, 915. Sections 21 and 22 are bounded on the south by the Francois Alpuente grant, R. & R. 223 (Section 115), and section 21 is bounded on the north by fractional section 16, and on the west by fractional section 20."

"Defendant traces title to a tract having eight arpents front on Bayou St. John, measured from the southern boundary of the Alexander Milne grant (C. B. 164), by the depth of forty arpents, to Don Carlos Tarascon, who is supposed to have obtained a grant from the French Governor, Aubry, in 1766. The eight arpents from the depth of forty arpents, embraces the northern part, in fact, the major part, of fractional section 15.

"Defendant traces title to a tract having a front of three arpents (approximately 575 feet) on Bayou St. John, measured from the southern boundary of the supposed grant to Don Carlos Tarascon, by the depth of forty arpents, to Marie Chagne, who is supposed to have bought the land from Joseph Chagne, who is supposed to have held title under a French or Spanish grant to one De Morant. The tract of three arpents (or 575 feet) front by forty arpents in depth embraces the southern part of fractional section 15, and perhaps a narrow, triangular strip along the northern edge of fractional section 22.

"With regard to the southern part of the land in dispute, defendant attempts to trace title to Francois Alpuente, and contends that the Alpuente grant, R. & R. 223, section 115, which lies immediately south of

fractional sections 21 and 22, is erroneously located on the government map, and should be located further north, so as to adjoin the supposed De Morant grant. Defendant contends that this Court decided that the Alpuente grant should be so located in the case of *Shelly vs. Freidricks*, 117 La. 679, 42 South, 218.

"The District Court gave judgment in favor of the plaintiffs and intervenor for all of the land claimed by them; and the defendant has appealed." Rec. pp. 110-111.

The Supreme Court of Louisiana amended the judgment of the Civil District Court by rejecting plaintiffs' and intervenor's claim to the tract of land having eight arpents front on Bayou St. John, measured from the southern boundary of the Alexander Milne grant (O. B. 164) by a depth of 40 arpents, and affirmed by judgment of the district court as thus amended.

Plaintiffs and intervenor applied for a rehearing, which was refused. Rec. pp. 124-131. Defendant also applied for a rehearing, which was also refused. Rec. pp. 114-123. Defendant then applied to this Court for *writ of certiorari* to have the judgment of the Supreme Court of Louisiana reviewed, which application was denied by this Court. On June 12, 1922, defendant obtained from the Supreme Court of the United States a *writ or error* to the Supreme Court of Louisiana, and on June 14, 1922, plaintiffs and intervenor obtained a *cross writ of error*.

The case of *New Orleans Land Company, plaintiff in error, vs. Robt. R. Brott, Martha J. Brott and George O. Brott*, is docketed under the No. 64, October term, 1923, of this Court, and the case of *Robt. R. Brott, Martha J. Brott and George O. Brott, plaintiffs in error, vs. New Orleans Land Company*, is docketed under the No. 86 of the same term.

CASE No. 64.

The assignment of error filed by the New Orleans Land Company, in connection with its writ of error, is as follows:

"TO THE HONORABLE, THE SUPREME COURT OF THE UNITED STATES.

"The New Orleans Land Company, plaintiff in error herein assign as error, apparent on the face of the record, that the judgment rendered by the Supreme Court of Louisiana, which is a final judgment, is contrary to the laws of the United States, to the treaties thereof, in maintaining as valid the authority of the Register of the Land Office, of the State of Louisiana, exercised under the laws of the State of Louisiana, in maintaining the validity of said acts of the Register of the Land Office, which exercise of authority was repugnant to the Constitution, treaties and laws of the United States, and the decision of the said Supreme Court of Louisiana was in favor of the validity of the acts of the said Register of the Land Office, and should be reversed.

"2. That it appears from the record that the title of the land from which your plaintiff in error has been divested has been acquired through *mesne conveyances* prior to acquisition of Louisiana to the United States; that said titles were protected and were complete in all particulars before the acquisition of Louisiana by the United States and that the same being claimed and held by your petitioner and predecessors in title was not covered by the Swamp Land Grant made to the State of Louisiana in 1849, 9th Statute at Large, pp. 352-353; that your petitioner is therefore entitled to have said judgment reversed and the suit dismissed.

"3. Your petitioner further assigns as error that the Supreme Court of Louisiana disregarded and annulled to all intent and purposes the decree of the

Circuit Court of the United States, which ordered the sale of said land under Act 30 of 1871, which created a trust on said land for the payment of work of drainage in the City of New Orleans, which was ordered to be done by the State of Louisiana; that more than Two Million Dollars were due contractors and that the foreclosure of the trust for the payment of said work gave a complete and perfect title to your petitioner and their vendors and was a full and complete defense against any attack made on said title by the Courts of this State.

"Wherefore, Petitioner prays that the judgment of the Supreme Court of Louisiana be reversed and set aside and that the suit be dismissed at the cost of the defendants in error and your petitioner prays for general relief, etc." Rec. pp. 135-136.

SECOND ASSIGNMENT OF ERROR.

The second paragraph of the assignment of errors is number (2) and there seems to be no assignment bearing the number (1). The land referred to as that which the New Orleans Land Company has been divested of, is all of the land claimed by the plaintiffs except that portion of Section 15 which lies within the alleged Tarascon grant. The decision of the Supreme Court of Louisiana is so manifestly correct in rejecting the claim of the New Orleans Land Company to this property, that it does not seem to the writers necessary to do more than reproduce the part of the opinion of the Supreme Court of Louisiana in this case dealing with the portion of the land in controversy:

"With regard to that part of the land in dispute which lies immediately south of the Tarascon grant, between it and the Alpuente grant, defendant's chain of title ends abruptly in a sale made by Maria

Chagne, a free woman of color, to Jose Dupard, on the 10th of September, 1799. The land is described in a translation of the deed as follows:

"'Three arpents of ground situated on the Bayou St. John, bounded on one side by lands of Mrs. Widow St. Maxent and on the other by those of Michel Derruisseaux, with a depth and terms shown on a figured plan made by the royal surveyor, Don Carlos Trudeau, which I (Maria Chagne) have delivered to the purchaser for his information, which land belongs to me (Maria Chagne) through purchase from Jose Chagne about twenty-seven years ago and under private signature, etc.'

"The deed does not refer to any grant, either French or Spanish; and there is no proof, not even secondary or parol evidence, that such a grant was ever made by either the French or Spanish government. From the declaration that the land was 'shown on a figured plan by the royal surveyor, Don Carlos Trudeau,' which plan was said to have been delivered by Jose Dupart for his information, it may be inferred that Jose Chagne held under an incomplete concession from the French or Spanish authorities. But there is no evidence that the claim was ever confirmed, either expressly or tacitly, by the Spanish government after the transfer of the territory of Louisiana by France to Spain. There is no evidence that Jose Chagne or any one claiming title from him had possession of the land long enough to acquire title by prescription under the Spanish law, or long enough to warrant the inference that the Spanish authorities tacitly ratified the grant, if in fact a grant was ever made. In fact, there is no proof—nothing more than such inference as may be drawn from the recitals in the deed from Maria Chagne to

Jose Dupart—that the land was actually possessed, occupied or cultivated, by any one claiming under the supposed order of survey referred to in the deed from Maria Chagne to Jose Dupart. What is even more important is that no claim to this land, either under an order of survey or by virtue of occupancy or possession and cultivation, was ever presented to any one of the boards of commissioners created by the Acts of Congress for the purpose of investigating and either confirming or rejecting incomplete or unrecorded grants made by the French or Spanish authorities. We refer to the Act of Congress of March 2, 1805 (2 Stat. at Large, 324), and Sec. 4 of the Act of Congress of April 25, 1812, Chapter LXVII, enacted for the protection of claimants who had failed to comply with the provisions of the Statute of 1805. Nor was any suit brought to confirm any claim of Jose Chagne, or of any one from whom he claimed title, or of any one claiming title from him, under the provisions of the Act of Congress of June 17, 1844 (5 Stat. at Large, 676), extending to claimants in Louisiana the provisions of the Act of May 26, 1824 (4 Stat. at Large, 52). By the very terms of the statutes referred to, all incomplete claims from the French or Spanish government, that were not asserted within the time allowed, were thereafter properly ignored by the land department of the United States; and the government was thereafter free to dispose of any such lands, as the legislative department saw fit. *Davis vs. Police Jury of Concordia Parish*, 1 La. An., 288; 9 How., 280, 13 Law Ed., 138. *Lobdell vs. Clarke*, 4 La. A., 99. *United States vs. Reynes*, 9 How., 127, 13 Law Ed., 74. *United States vs. Dauterive*, 10 How. 609, 13 Law Ed., 560. *United States vs. Ducros*, 15 How.,

38, 14 Law Ed., 591. *Coffee vs. Groover*, 123 U. S., 1, 31 Law Ed., 51. The case of *United States vs. Pellerin, Roman, De Villement's heirs, and Labranche's heirs*, 13 How., 9, 14 Law Ed., 28, was brought under the provisions of the Acts of May 26, 1824, and June 17, 1844; and the decision had nothing to do with the previous Acts of Congress requiring registry of land claims with the boards of commissions referred to in the statutes. See *State vs. Bowie Lumber Co.*, 148 La., 591, 87 South., 305. Our conclusion is that defendant has no title from the government under a supposed grant to DeMorant of the land described in the deed from Maria Chagne to Jose Dupart.

"In so far as defendant claims title from Francois Alpuente, it is sufficient to say that the Francois Alpuente grant lies immediately south of and adjoining the land in dispute. Defendant's counsel are in error in saying that this Court decided in *Shelly vs. Friedricks*, 117 La., 679, 42 South., 218, that the Francis Alpuente grant, and the Louis Allard grant immediately south of it, were located erroneously on the official survey of that township, and that these tracts should be located further north. If such an error was assumed in the case cited, the assumption was an error and was a matter of no importance to the issues presented for decision. There is no reason whatever for assuming that the surveyors located these grants in the wrong place; and, if we thought there was an error in that respect, it would not be our province to correct it. The power to make or to correct official surveys of public lands belongs exclusively to the political department of the government, and its decisions are not subject to review by the courts, in suits between individuals. *Leader Realty Co. vs. Lakeview Land Co.*, 142 La., 169, 76 South., 599.

"Defendant pleaded the prescription of ten and thirty years, but the record does not contain any evidence that defendant or its authors in title had actual possession of the land long enough to sustain either plea of prescription. The only tract of land that defendant possessed long enough to acquire title by the prescription of ten years, in T. 12, R. 11 E., is situated in the rear of the Alexander Milne grant, nearly two miles from the land in contest. See *Leader Realty vs. Lakeview Land Co.*, 133 La., 646, 63 South., 253, and 142 La., 169, 76 South., 599.

"The judgment appealed from is amended so as to reject the demands of the plaintiffs and the intervenor, and to recognize the title of the defendant, to that part of Section 15 that is embraced within the Don Carlos Tarascon grant, measuring eight arpents front on the west side of Bayou St. John, measured from the southern boundary of the Alexander Milne grant, O. B. 164 (Sec. 113), and extending westward across said Section 15 the depth of forty arpents. In all other respects, the judgment appealed from is affirmed. The costs of this appeal are to be borne by plaintiffs and intervenor in the proportion of one-half by Mrs. Martha J. Brott, one-fourth by Robert R. Brott and one-fourth by George O. Brott. Defendant is to pay the costs incurred in the District Court." Record, pp. 112, 113, 114.

THIRD ASSIGNMENT OF ERROR.

The New Orleans Land Company, defendant in error, in the assignment of errors, paragraph Number 3, does not make it clear that there is anything more disposed of with reference to the annulment of its title than a matter of local law. In the answer to the petition of Robert R. Brott, et

als., the New Orleans Land Company has set up title by sale made in the receivership proceedings of *J. W. Peake vs. City of New Orleans*, No. 1208 of the United States District Court for the Eastern District of Louisiana. In the case of *Willis J. Roussell, Administrator, vs. New Orleans Land Company*, 143 La. p. 1058, which was a case exactly like this, dealing with the same judgment, the Supreme Court of Louisiana says:

> "The defendant contends that the sale to Dr. Gaudet under an order of a Federal Court of competent jurisdiction could not be set aside by collateral proceedings in a State court. The answer is that the plaintiffs here do not seek to set aside the judgment or order of the Federal Court. That judgment or order, in so far as it authorized the sale of the property belonging to the defendant, City of New Orleans, then in court, is not disturbed or affected by this court. The judgment or order of the Federal Court did not authorize, or purport to authorize, a sale of property belonging to the Lavergne heirs, or belonging to any one except the City of New Orleans. Hence the attempted sale of property belonging to the Lavergne heirs, by J. Ward Gurley, Receiver, was not authorized or sanctioned by any order of the Federal Court and is not protected by the full faith and credit clause in the Federal Constitution."

The same contention was made in another case with respect to identically the same judgment of the United States District Court, the case of *Leader Realty Company vs. Lakeview Land Co.*, 142 La., 179:

> "The defendants contend further that the state's acquisition of lot 7 of section 8 and lots 1, 6, 7 and 12 of section 17, in township 12 S., range 11 E., under the Swamp Land Act of March 2, 1849, in-

ured to the boards of drainage commissioners of the drainage districts of Orleans and Jefferson under and by virtue of Act No. 165 of 1858, and inured to the board of administrators of New Orleans under Act No. 30 of 1871. Act No. 165 of 1858 did not purport to transfer any land of the state to the leveeing and drainage district created by that statute, nor did it authorize the board of commissioners of the district to levy taxes upon any public land. Nor did Act No. 30 of 1871 purport to transfer any land of the state to the board of administrators of New Orleans. When the land was assessed for taxes, and seized and sold to the board of commissioners of the drainage district, it was a part of the public land of the United States, subject to approval to the state as swamp or overflowed land; and it was therefore not subject to taxation. That question was also fully considered in the case of the *Board of Directors of Public Schools vs. New Orleans Land Co., supra;* and it would be useless to repeat here the reasons assigned for the opinion in that case that the state was not estopped, by any act of the Legislature, to claim and dispose of the land after it was approved to the state as swamp or overflowed land."

The New Orleans Land Company, the real defendant in the case just quoted, applied to the United States District Court for the Eastern District of Louisiana by ancilliary bill filed in the said case of *J. W. Peake vs. City of New Orleans*, for an injunction to restrain the execution of the judgment of the Supreme Court of Louisiana, on the ground that it annulled the judgment rendered in the said case of *J. W. Peake vs. City of New Orleans*, under which the New Orleans Land Company held title, and that the judgment of the Supreme Court of Louisiana denied that judgment full

faith and credit and thereby violated complainant's constitutional rights. The ancillary bill was dismissed by the judge of the United States District Court for lack of jurisdiction. Appeal was taken to this Court, and this Court affirmed the judgment of the district court. We quote the syllabus of the case:

> "In a suit against New Orleans, where jurisdiction rested on diverse citizenship, the District Court through a receiver sold certain land to satisfy a money judgment previously recovered by the plaintiff against the city on certain drainage warrants, the sale being decreed upon the ground that under acts of Louisiana the city held the land in trust to secure such warrant. Held, that the proceeding was not *in rem*, passed only such title as the city had, and afforded no basis for ancilliary jurisdiction of a suit in the same court to protect the title sold against a later judgment of the state courts which adjudged it inferior to another title, derived by independent grant from the State whose holder and its predecessors were not parties to the receivership proceedings." *New Orleans Land Co. vs. Leader Realty Co., Ltd.*, 255 U. S. Reports, p. 266.

As the Court in the case of the *New Orleans Land Company vs. Leader Realty Co., Ltd.*, was dealing with the same judgment which the New Orleans Land Company has made the basis of its third assignment of error, we think no good purpose would be served by further discussion.

It is therefore submitted that the judgment of the Supreme Court of Louisiana, in so far as it affirmed the judgment of the Civil District Court, is correct and should be affirmed.

CASE NO. 86.

The land involved in the case of *Robert R. Brott, Martha J. Brott and George O. Brott, plaintiffs in error, vs. the New Orleans Land Company* is that portion of section 15 lying within the limits of an alleged grant made by Aubry, a French officer who usurped the government upon the death of D'Abadie, the French governor, subsequent to the promulgation of the treaty of Fontainbleau made in 1762. This grant is supposed to have been made in 1766 by Aubry, representing the French king. The evidence of the grant is secondary, and consists solely of a self-serving statement made in an act of sale by Carlos Terascon to Andreas Jung, before Almonester, a notary public, in 1773, being a sale of certain property described in the act of sale as "a habitation belonging to vendor, situated one league from the City of New Orleans on the Bayou St. John, composed of eight arpents of ground on the front with the ordinary depth of 40 arpents, bounded on one side by another of C. Bartholome and on the other by one of Don Antonio Maxent, being the same held by me by a concession made to me from Monr. Aubrey, French governor, at the time of his domination, before Senr. Foucoult, commissary, as appears in the titles that were delivered to the purchaser," which habitation of eight arpents in front was sold, free of all encumbrances, for the price of $60.00. Record pp. 43-45.

There is no proof of any survey of this property having been made, nor is there any evidence prior to the acquisition of Louisiana by the United States to show where it was situated, as none of the deeds offered in evidence show the situation of any property belonging either to C. Bartholome or

Don Antonio Maxent, which properties are claimed by the New Orleans Land Company, defendant in error, to have been the boundaries.

There is no evidence to show what sort of concession Terascon received from Aubry. It may have been a concession hedged about with all sorts of conditions, a failure to observe any of which might have resulted in striking the concession with nullity, even if it had originally been of any validity.

There is no proof in the record, except the statement in this deed, that the property being sold was a "habitation" and that it was bounded on each side by a "habitation."

In 1774, by act before the same Notary Public, the property was sold by Andreas Jung to a free woman of color named Marianna. This act of sale contains the same description, and there is no recital of the act of sale going to show any possession of the property. Record pp. 45 and 46.

In 1777, by act before the same notary, Marianna sold the property to another free negro named Naneta. The description in this act is the same as in the other two, except that it is stated that the boundary on one side is the **land** of Bartholome and on the other the **land** of Maxent, in both instances the word "land" being substituted for "habitation." This act recites that there were sold with the land two cows and four calves, which were on the "habitation." Record pp. 49-51.

In 1782, Naneta made a will in which no mention was made of the property in contest, under which she instituted a slave named Miguel, to whom she says she was married, as her universal legatee. This will does not appear ever to have been probated. Record pp. 52-54.

In 1804, Michael Desruisseau sold to Jacques Proffet, and in that sale it appears from the description that what is being sold is a tract of land without improvements. Record pp. 54 and 55.

In 1804, Michael Desruisseau sold to Alexander Milne two arpents of ground fronting on Bayou St. John by forty arpents in depth, bounded on one side by the land of Jacques Proffet and David Urquhart and on the other side by land of vendor. There is nothing in this act to indicate that the property was anything but a vacant tract of land. Record pp. 65 and 66.

In 1805, there was executed a will by Michael Desruisseau in favor of his wife, Marie Noyant. Record pp. 59 and 60.

In 1805, Alexander Milne sold to George W. Morgan two arpents in front on Bayou St. John, by a depth of forty arpents which he had acquired from Michael Desruisseau. There is nothing in the act to indicate that anything more than a vacant tract of land was being conveyed. Record, pp. 56 and 57.

In October of the same year, George W. Morgan reconveyed these two arpents of ground to Alexander Milne. Record p. 58.

In 1807, Jacques Proffet sold the four arpents in front, which he had acquired from Michael Desruisseau, to Alexander Milne. There is nothing in the act to indicate the sale of anything but vacant land. Record pp. 55 and 56.

In 1829, Louis Peyre Ferry purchased from the succession of Marie Michel, otherwise Marie Noyant, two arpents of ground on Bayou St. John by forty arpents in depth. The act shows the property was vacant, and in December of the

same year, Ferry sold the same property to Alexander Milne. Record pp. 61, 62, 63 and 64.

The alleged title of Milne is admitted to have passed by mense conveyances to the New Orleans Land Company, defendant in error.

There is no possession shown otherwise than such as might be deduced from the acts of sale and the declaration in the sale from Marianna to Naneta in 1777, that there were two cows and four calves on the property. If it be conceded that the land being transferred was a habitation in 1773, and that it remained such until 1777, there is not one iota of evidence to show any possession except from 1773 to 1777.

Don Carlos Trudeau, the Spanish surveyor general of Louisiana, in 1798, made an official map of the city of New Orleans and the plantations lying in the environs thereof, which was published and a copy of which was reproduced by Chief Justice Martin of Louisiana, in his history of Louisiana, just inside the front cover. This map shows that at that time, if the property be located as contended by the defendant in error, it was cypress swamp. Furthermore, the official survey by the United States Government of the township in 1871-72 shows that it was then deep cypress swamp. A cypress swamp is at all times uninhabitable and covered with water.

And, furthermore, it was found, as a fact by the Supreme Court of Louisiana, which finding your Honors will not review, that neither defendant in error nor its authors in title have ever had possession of the property long enough to sustain a plea of prescription:

> "The defendant pleaded the prescription of ten and thirty years, but the record does not contain any

evidence that defendants or its authors in title had actual possession of the land long enough to sustain either plea of prescription. **The only tract of land that defendant possessed long enough to acquire title by the prescription of ten years in Township 12, Range 11 East, is situated in the rear of the Alexander Milne grant, nearly two miles from the land in contest."** Record p. 114.

When the act of sale by Carlos Terascon to Andreas Jung was offered in evidence, counsel for the plaintiffs in error objected to the act being received in evidence, as follows:

"By Mr. Wall: We object to this offer on the ground that it is in the Spanish language and not accompanied by a translation; we make the further objection that it is recited in the instrument that the property was acquired by a concession by Aubry and Fourcault, representing the Government of France at a time when Louisiana was Spanish territory, to-wit, in 1766."

"By Mr. Louque: It says during the dominion of the French."

"By Mr. Wall: And we object to the recitals as to the origin of this title on the ground that they are simply unsworn statements contained in a deed between other parties than those to this suit. We make the further objection that any evidence in support of the title sought to be offered in evidence here is inadmissable until some concession or grant emanating from the sovereign authority is shown; and we make the further objection that there is no evidence as to this alleged French grant as ever having been submitted to any of the boards created by the various acts of Congress for the determination of the validity of titles in Louisiana under the French and Spanish Governments, which has not been shown; and un-

til such presentation and grant by the Board of Commissioners is proven, no such incomplete title is admissable in evidence against any grant emanating from the United States Government." Record pp. 26 and 27.

The trial judge referred the objection to the effect and under the Louisiana practice the note of evidence and ruling of the judge stands in lieu of a formal bill of exceptions.

The title shown by the plaintiffs in error was acquired by them by inheritance as the widow and heirs of George F. Brott, deceased. George F. Brott acquired section 15, Township 12, South of Range 11 East, Southeastern District of Louisiana, East of the Mississippi river, according to the United States official survey, from Dr. Andrew W. Smyth, who had acquired title from the State of Louisiana by patent dated June 7, 1874. Brott sold a half interest in this fractional section to James G. Richardson, who retroceded it to Brott on June 15, 1875. The land was acquired by the State by virtue of the swamp land grant of March 7, 1849 (9 U. S. Statutes at large, p. 352), was selected and surveyed, and the selection was approved on April 10, 1874. Record pp. 32-43.

That part of the opinion of the Supreme Court of Louisiana applicable to the land awarded by the judgment of that court of the New Orleans Land Company, defendant in error, alleged to be within the boundary of the supposed grant to Carlos Tarascon, is as follows:

> "With regard to the eight arpents front on Bayou St. John, embracing the northern and major part of fractional Section 15, defendant hold title through mense conveyances from Andres Jung, who bought from Don Carlos Tarascon, on the 3rd of July, 1773, a tract of land described as follows, viz:

"'A plantation situated one league from this city, on Bayou St. John, composed of eight arpents of ground on the front, with the ordinary depth of forty, bounded on one side by another plantation belonging to Don Antonio Maxent.'

"In the case of the *State of Louisiana vs. New Orleans Land Co.*, 143 La., 858, 79 South., 515, where the State claimed title to the fractional Section 16, immediately west of the fractional Section 15 now in contest, this Court recognized and confirmed the defendant's title by virtue of the Don Carlos Tarascon grant embracing the land lying immediately south of the Alexander Milne grant (O. B. 164, Section 113), and extending back forty arpents from Bayou St. John. The Court concluded that here was sufficient proof that such a grant had been made by Governor Aubrey, and that, although the grant was made subsequent to the transfer of the Louisiana territory by France to Spain, by the treaty published in Versailles on the 21st of April, 1764, and published in New Orleans in October of that year, nevertheless the grant made by the French Governor was subsequently ratified and confirmed tacitly by the Spanish authorities, and was, therefore, a complete grant when the territory of Louisiana was transferred by France to the United States, by the Treaty of Paris, of date the 30th of April, 1803. **It is true the Court went very far in holding that the grant was a complete grant, which did not need confirmation by the government of the United States; and it might be difficult to reconcile the ruling with some of the provisions of the federal statutes requiring registry of such claims.** (Black type ours.)

"But the equities were strongly in favor of the defendant, because of the long-continued possession

of the land by defendant's authors in title; and, as the case was taken to the Supreme Court of the United States on a writ of error and was there dismissed, we are not disposed to reconsider the matter. The record in that case, including all of the evidence on the subject of the tacit ratification of the Don Carlos Tarascon grant by the Spanish authorities, is before us in this case. It would be impossible, therefore, to reject defendant's claim to that part of Section 15 which is embraced in the Tarascon grant, without overruling our decision in the case of the *State vs. New Orleans Land Co.*, with regard to that part of Section 16 which is also within the Tarascon grant; which we decline to do." Record pp. 111-112.

The decree of the Supreme Court of Louisiana awarded all of that portion of section 15, lying within the limitations of the alleged grant to Tarascon, to defendant in error. Record p. 114. Plaintiff in error applied for a rehearing, which was refused, and their remedies in the Louisiana courts thereby exhausted. See pp. 124-131. Plaintiff in error obtained a writ of error to have its case reviewed by this Honorable Court and assigned error as follows:

ASSIGNMENT OF ERRORS.

"Now, into court, come Robert R. Brott, Mrs. Martha J. Brott, widow of George F. Brott, deceased, and George O. Brott, plaintiffs, intervenor and plaintiffs in error, through Wm. Winans Wall and Charles Schneidau, their attorneys, and with respect, say:

"That in the record, proceedings and decree in the above entitled and numbered matter, there is manifest error in this, to-wit:

(1) The court erred in holding that Charles Philippe Aubry, Knight of the Royal and Military Order of St. Louis, Commandant of the King of

France in Louisiana, in 1766, could make a valid or complete grant of land in Louisiana in 1766, four years after the Treaty of Versailles was signed and two years after it was published.

(2) The court erred in holding that the null and void grant made by Aubry, in 1766, was ever, in any manner, confirmed by the King of Spain or his representatives, or that a complete title became vested in Carlos Tarascon, or his successors in title, by a possession, which was never made the basis of a formal application for title by the possessor.

(3) The court erred in holding that evidence of the alleged grant by Aubry to Tarascon, in 1766, could be received in opposition to a grant by the United States, because neither the grant, nor any evidence thereof, nor any claim of the ownership or possession thereunder, was ever reduced to writing and filed with the board of commissioners created by the Act of Congress of March 2, 1805, or any board appointed for the investigation of land titles in Louisiana, by any subsequent cognate act.

(4) The court erred in holding that the claimants, under the null and void grant by Aubry, in 1766, were entitled to be recognized as the owners of the property, by reason of the Treaty of Paris, without observing the procedure necessary to secure a confirmation of their titles by Act of Congress, in accordance with Act of March 2, 1805, and subsequent cognate acts, dealing with the same subject.

"Wherefore, the said Robert R. Brott, Mrs. Martha J. Brott, widow of George F. Brott, deceased, and George O. Brott, plaintiffs intervenor and plaintiffs in error, pray that the final judgment or decree of the Supreme Court of Louisiana rendered in this cause be annulled, avoided and reversed, with costs in so far as it amends the judgment of the Civil District

Court for the Parish of Orleans, and gives effect to the title of the defendant held by mesne conveyances, under the alleged grant by Aubry, pretending to act as the representative of France, to Carlos Tarascon. And for costs and general relief." Record pp. 140 and 141.

JURISDICTIONAL.

From the foregoing statement of the case, it is perfectly obvious that this is a case arising under various acts of Congress and the treaty between France and the United States by which the latter acquired Louisiana. In a case similar to this, *Glasgow vs. Baker*, 128 U. S. Reports, 560, this Court, through Mr. Justice Miller, said:

> "There is no question here as to the jurisdiction of this court, although the case comes from the Supreme Court of the State; for every matter in dispute arises either under the treaty of 1803, the acts of congress in regard to these lands, or some other officer of the government of the United States exercised over them."

FIRST ASSIGNMENT OF ERROR.

The territory of Louisiana, on November 3, 1762, by the treaty of Fontainbleau, was ceded by the King of France to the King of Spain. The transfer was absolute. All power or rights in the subject were transferred. The character and extent of this act of cession is evidenced by the instructions from the French king to D'Abadie, director general and commandant of Louisiana, dated at Versailles, April 21, 1764, which are as follows:

> "Having ceded to my very dear and best beloved cousin, the King of Spain, and to his successors in

full property, purely and simply and without exceptions, the whole country known by the name of Louisiana;" the king then proceeds to command the Director General that on receipt of his instructions, whether they come to your hands by the offices of his Catholic majesty, or directly by such French vessels as may be charged with same, you are to deliver up to the governor, or officer appointed for that purpose by the King of Spain, the said country and colony of Louisiana, and the posts thereon depending, likewise the city and island of New Orleans, in such state and conditions as they shall be found to be in on the day of the said concession, being willing in all time to come that they shall belong to his Catholic majesty, to be governed and administered by his governors and officers and be possessed by him in full property and without exceptions."

Before the order for the delivery of Louisiana could be delivered, D'Abadie, the French governor, died, and Aubry, a French officer, in defiance of the French king's orders, took over the administration of the government of the colony and continued to exercise supreme authority until the arrival of O'Reilly, who had been delegated by the King of France to take possession of the colony of Louisiana for the Crown of Spain, "employing such force as might be necessary." In the period from 1764 to 1769, before the arrival of O'Reilly, Aubry made numerous grants of land, many of which have been the subject of inquiry in this Court, in which your Honors were called upon to investigate the validity of such grants. In all of these cases your Honors have decided that grants made by Aubry, during the time he held possession of Louisiana adversely to the King of Spain and contrary to the orders of the King of France, were null

and void. Your Honors have decided so often to this effect, that it is surprising that at this date any one could be found with sufficient temerity to argue to this Court that during the domination of Aubry he did have power to make valid grants of land in Louisiana; yet, such is the argument of the learned counsel representing the defendant in error.

The first case dealing with the authority of Aubry to make grants is that of *United States vs. D'Auterive, et als.*, 10 Howard, 609. In that case, the grant exhibited from Aubry was absolute, and without conditions. The petition in that case averred (and it was no doubt substantiated by proof), "the petitioner shows that it appears from said statement that the said Bernard D'Auterive occupied said land as a stock farm, for which purpose it had been granted, up to the time of his death, which occurred in 1776; that the said D'Auterive left a widow and four small children; that in 1779, his widow married Jean Baptiste Degruy; that the said Degruy and his wife continued to occupy said land as a stock farm and to cultivate a small part thereof until 1787, when they removed to Mississippi." 15 Howard, 613.

Your Honors held that the grant to D'Auterive was void and there was no evidence to show any confirmatory act by the Spanish government. In the instant case, where the alleged Tarascon grant has not been produced and the court is asked to presume a grant from a self-serving statement in a deed, even if your Honors should hold that the descriptions in the deeds from 1773 to 1777 and the declaration about the two cows and four calves proves possession during that period, much less possession is shown—five years.

The decision in the D'Auterive case was in line with and based on the decision of this Court in the cases of *Davis vs.*

Police Jury of Concordia, 9 Howard, 280, and *United States vs. Reynes*, 9 Howard, 127, wherein your Honors held that, after a government has ceded a territory unconditionally to another government and thereafter remains in actual possession and administration of said territory, during which time the ceding government makes grants of land in the ceded territory, such grants are absolutely null and void.

In the case of *United States vs. Armand Pillerin, et als.*, in discussing grants made by Aubry, your Honors said:

> "These four cases are all French grants made after the Treaty of Fontainbleau by which Louisiana was ceded to Spain. We have already decided in the cases of *United States vs. Reynes*, 9 Howard, 127, and *United States vs. D'Auterive*, 10 Howard, 607, that grants of this description are void, unless confirmed by the Spanish authorities before the cession to the United States." 13 Howard, 9.

The decision in the D'Auterive case was approved in *Coffee vs. Groover*, 123 U. S., 1, wherein it was held that the existence of the *de facto* government would not influence the decision on the points involved. And, in the case of *United States vs. Ducro*, 15 Howard, p. 38, where the grant was made by D'Abadie, who was the French governor and not merely one who had without authority from his king and contrary to orders usurped the office as Aubry had, your Honors said:

> "A grant of land in Louisiana by the French authorities, in 1764, is void. The province was ceded to Spain in 1762. In 1793, certain legal proceedings were had before Baron de Carondelet, in his judicial capacity, wherein the property now claimed was described as part of the estate of the grantor of the present claim; but this did not amount to a confirmation of the title in his political character."

Dealing with the alleged grant to Tarascon, the Supreme Court of Louisiana reviewed at great length the law and jurisprudence appertaining to the subject and concluded that the grant was absolutely null for want of authority in Aubry to make it in the case of *Board of Directors vs. New Orleans Land Co.*, 138 La., p. 39, *et seq.* The court said:

> "Defendant contends that the land in question did not belong to the United States government at the date of the passage of the act reserving sixteenth sections for schools. It sets up title in itself and its ancestors, claiming that France or Spain, it is not clear which, made a grant or concession of the land to Carlos Terascon through or by a French officer, Gov. Aubry, in 1766, while Louisiana was under the dominion of Spain, and that said title was a complete title.
>
> "The legal title thus set up by defendant is not in the record; and the only evidence of this concession is a declaration made by Terascon in an act of sale made to Andre Jung, in 1773, wherein he declared that the property is 'the same held by me by concession made to me by Monsieur Aubry, French governor, at the time of his domination, before Stans. Foucault, commissary, as appears in the titles he delivered to the purchaser.' The concession or grant, or a copy thereof, was not offered in evidence. Defendant asks the court to presume upon the strength of the declaration made by Terascon, and copied above, that such a concession or grant was made, and that it is in full force and effect. Under the present law, the patent is the instrument which passes title from the United States. It is the governmental conveyance. If the defendant and its ancestors in title possessed a title superior to that of the plaintiff, a

court of equity would, under proper pleadings, enforce said equity by compelling a transfer of the legal title. But the defendant has set forth merely a legal title, and it cannot be permitted to offer evidence in support of an equitable claim which would entitle it to a conveyance of the legal title.

"Congress alone has the power to declare the dignity and effect of titles emanating from the United States, or from those from whom defendant may have acquired title under the treaty by which Louisiana was ceded to the United States.

"Defendant says that its title to the land in controversy is protected by the treaty entered into between the United States and France, which prevented the property in question from ever becoming the property of the United States government. And it cites authorities going to show that where complete titles had been made by the several governments of Louisiana before Louisiana was ceded to the United States they were recognized by the laws of Congress and by the decisions of the courts. But defendant does not offer a complete title. It asks the court to presume that a complete grant was issued to Terascon in 1766.

"In the suit of *Lobdell vs. Clark*, 4 La. Ann. 99, we define the difference between a complete grant and an incomplete grant, concluding:

" 'No title passed from the French and Spanish sovereign for lands in the territory of Orleans and the district of Louisiana by a mere order of survey; until a patent issued, all inchoate grants remained within the discretion of the grantor; and they were not changed in their character by the treaty by which Louisiana was acquired, that treaty imposing on the government of the United States only a political obli-

gation to perfect them, which cannot be enforced by any action of the judicial tribunals.' "

"Defendant cites the case of *Devall vs. Chopin*, 15 La. 566, decided in 1840, as authority for assuming that the acts of those who asserted themselves to be in authority under the regimes prior to the acquisition by the United States government were regular and binding. That case between individuals who were claiming under titles regularly confirmed by acts of Congress on the 28th of February, 1823, which were accompanied by plats of surveys made under the Spanish government, showing their locations.

"Defendant in this case has not produced any act of Congress in its favor, or in favor of its ancestors in title; and it has not filed any concession, grant, or survey showing the location of the land issued by any one whatever. And the decision in the case cited is based on the prescription of 10 and 30 years pleaded by defendant.

"In the course of the opinion it is said:

" 'After a careful examination of the facts of the case, and an attentive consideration of the rights of the parties, we have come to the conclusion that it has become unnecessary for us to inquire deeply into the validity of their respective titles. We are not disposed to question the authority of the French commandant of Pointe Coupee to put a settler in the possession of a part of the public domain by a written permission or grant which, showing the extent of the tract conceded, and accompanied with proof of long occupancy, might afterwards be considered by his government as a sufficient title; indeed, such a title has very often been recognized subsequently, by the Spanish authorities, to be an absolute abandonment of the King's domain, and in a great many instances has been made the foundation, as in the present case, of

favorable reports on which the government of the United States has confirmed a great number of private land claims. The jurisprudence of the Supreme Court of the United States on this subject establishes the principle 'that the acts of an officer to whom a public duty is assigned by his king, within the sphere of that duty, are *prima facie* taken to be within his power, and that he who controverts a grant executed by the lawful authority, takes on himself the burden of showing that the officer has transcended the powers conferred upon him.' "

"In the case just quoted from it appears that there was a written concession or grant showing the extent of the tract conceded, which is not so in the case before us; and Mr. Aubry, the French officer, who is said to have made the grant to Terascon, is clearly not an officer to whom the Spanish government granted authority to make such concessions of land.

"In the later case of *Davis vs. Police Jury*, 1 La. Ann., 288, we say:

" 'The question whether he (Casa Calvo, the *de facto* governor in 1801) had power to make the grant cannot be determined in this controversy. The defendants cannot question his authority.' " (The case referred to was taken to this Court and a different conclusion reached. 9 Howard 280.)

"Had defendant shown that Monsieur Aubry was representing the Spanish government, and it had produced sufficient evidence of a grant made by him to Terascon, duly recorded, it would have produced *prima facie* evidence that Aubry was acting within his power. *Delassus vs. United States*, 9 Pet. 134, 9 L. Ed. 71.

"A grant or a concession made by an officer lawfully authorized to make it carries with it *prima facie* evidence that the grant is within his power.

"In a decision subsequently rendered by this court, in the case of *Lavergne's Heirs vs. Elkins' Heirs*, 17 La. 220, it is shown very clearly that the court, in the several cases before us, referred to complete grants made by the French and Spanish governments. It was held, under complete grants, that no confirmation was required by this government to give validity to them. And we there quote from the instructions by the secretary of the treasurer to the registers of the land offices in New Orleans and Opelousas in the year 1805, with reference to grants made prior to October 1, 1800, to the effect that persons claiming under the first two sections of the act referred to, or under incomplete titles, shall file notices of their claims with the register. And on the register, properly authenticated, was found recorded a grant in the usual form to Jean Lavergne, the ancestor of plaintiffs in that case, for the land claimed by them.

"Since 1750 the territory of Louisiana has been the subject of three international transfers.

"First. The transfer from France to Spain by the secret Treaty of Fontainbleau, on November 3, 1762, which was published at Versailles, April 21, 1764, and published in New Orleans in October, 1764.

"Second. The transfer by Spain to France by the Treaty of St. Ildefonso, on October 1, 1800, by which the territory was ordered delivered, on October 15, 1802, and which treaty became effective by the acceptance thereof by the Duke of Parma on March 21, 1801.

"Third. The transfer by France to the United States by the Treaty of Paris, on the 30th of April, 1803 (8 Stat. p. 200).

"After each of the above transfers of sovereignty the ceding government remained in posses-

sion for considerable time after the conclusion of the treaty, and during such possession there were land grants made by the officers of the ceding government in possession, and these grants have been the subject of a great number of legal controversies waged before the Supreme Court of the United States; and the principles enunciated in those cases have been formulated in a paragraph of the Encyclopedia of United States Supreme Court Reports, vol. X, p. 271, as follows:

" 'Where a sovereignty cedes a part of its territory to another, the disposal of the public domain thereby ceded passes to the latter, and any grant thereafter made by the former is void; and the fact that the authorities of the ceding sovereign retain possession for several years thereafter can make no difference. For cases as to the validity of grants arising under such circumstances, see note 87. Where a survey is made a part of a descriptive grant, before the time fixed by the treaty and act of Congress, an order or permission to survey the residue elsewhere, made afterwards, is void, as in contravention of the terms of the treaty and the act of Congress; it being in effect and substance a new grant, made after the power of the government to make grants had ceased. Spanish grants made in Texas for lands in the "Neutral Ground," east of the Sabine, from 1790 to 1800, are valid. Of course, such grants may be confirmed by the sovereignty holding the territory under cession.'

"The theory upon which the null and void grant in this case is claimed to have been confirmed by the Spanish government is that, when Carlos Terascon wished to sell the tract of land which he claimed had been granted him, he employed Don Carlos Troudeau, royal surveyor of the Spanish government, to

make out a plan subdividing the property in order to be able to sell it by a definite and intelligent description. But the acts of Don Carlos Troudeau, in preparing private plans for one claiming to be owner of property, would not be binding on the Spanish government any more than a private plan prepared by a deputy surveyor of the city of New Orleans would be binding on the city of New Orleans, or a private survey made by a deputy United States surveyor would be binding on the United States government. (Note.—This is error; the only survey by Trudeau, the Spanish surveyor general, was of the Morant tract.)

"In the case of *United States vs. King*, 3 How. 773, 11 L. Ed. 824, it was held that the principles of law involved in that case were not new to the court, and it was there said that:

" 'The land claimed was not severed from the public domain, by the Spanish authorities, and set apart as private property, and, consequently, it passed to the United States, by the treaty which ceded to them all the public and unappropriated lands.'

"That was a case which went from the State of Louisiana and where the court held that, 'The title under the treaty of cession being in the United States, an equitable title, if the defendant in error could show one, would be no defense'; and there was judgment in favor of the government. And the title to this land, under the treaty of cession, was held to be in the United States.

"The question presented in this case was reviewed and passed upon by the Supreme Court of the United States in the case of *United States vs. D'Auterive*, 10 How. 609, 13 L. Ed. 560, decided in 1850,

ten years after our decision in *Devall vs. Choppin, supra.* The court there held that a grant of Louisiana land, made by French authorities after the treaty of Fontainebleau, November 3, 1762, wherein the King of France ceded to the King of Spain the province of Louisiana, was void. For the reasons there stated, a grant made by the French Governor Aubry to Terascon in 1766 is void, if evidence of such grant had been produced in this cause. The court therein say:

" 'This instrument purports to be a grant from Charles Philippe Aubry, knight of the royal and military order of St. Louis, commandant of the king in Louisiana, and Dionysius Nicholas Foucault, filling the functions of director in that province, to Messrs. D'Auterive and Masse, and bearing date at New Orleans on the 2d day of March, 1765.

" 'The proceedings for the establishment of this claim in the court below were instituted under the authority of an act of Congress of May 26, 1824, entitled "An act to enable claimants to land within the state of Missouri and territory of Arkansas, to institute proceedings to try the validity of their claims," which law was in part re-enacted on the 17th of June, 1844, and extended in its operation to the state of Louisiana. Vide 5 Stats. at Large, 676. The purposes and the effect of the law of 1824, with reference both to the claims and the proceedings embraced within its provisions, have been heretofore examined by this court. They were especially considered at the last term, in the case of the *United States vs. Reynes*, 9 How. 127, 13 L. Ed. 74, and the following conclusions were then distinctly enunciated as implied necessarily in a just interpretation of that statute. Thus (9 How. 146, 147; 13 L. Ed. 74), in speaking of the statute of 1824, revived by

the act of 1844, this court explicitly declared that: "With respect to that interpretation of these acts of Congress which would expound them as conferring on applicants new rights not previously existing, we would remark that such an interpretation accords neither with the language nor the obvious spirit of these laws; for if we look to the language of the act of 1824, we find that the grants, surveys, etc., which are authorized to be brought before the courts, are those only which have been legally made, granted, or issued, and which were also protected by treaty. The legal integrity of these claims (involving necessarily the competency of the authority which conferred them) was a qualification inseparably associted by the law with that of their being protected by treaty. And as to the spirit and intention of the law, had it designed to create new rights, or to enlarge others previously existing, the natural and obvious means of so doing would have been a direct declaration to that effect; certainly not a provision placing these alleged rights in an adversary position to the government, to be vindicated by mere dint of evidence not to be resisted. The provision of the second section of the act of 1824, declaring that petitions presented under that act shall be conducted according to the rules of a court of equity, should be understood rather as excluding the technicalities of proceedings in court, than as varying in any degree the rights of parties litigant; as designed to prevent delays in adjudicating upon titles, as is further shown in another part of the same sentence, where it is declared that these petitions shall be tried without continuance, unless for cause shown. The limitation, too, maintained as to the character of claims, and that imposed upon the courts in adjudicating upon them, is farther evinced in that part of the

same section which says that the court shall hear and determine all questions relative to the title of the claimants, the extent, locality, and boundaries of the claim, and by final decree shall settle and determine the question of the validity of the title according to the law of nations, the stipulations of any treaty, and proceedings under the same, the several acts of Congress, and the laws and ordinances of the government from which it is alleged to have been derived.' "

"The court then refers to the instrument or grant held by the appellees, while in this case appellant has not produced an instrument of any description, and proceeded to say:

" 'On the 3d day of November, 1762, by a treaty, or, as it is termed in the language of the king, by "a special act," done at Fontainbleau, Louis XV ceded to the king of Spain the entire province of Louisiana, including the island and city of New Orleans. The character and extent of this act of cession, as evinced by the instructions from the French king, dated at Versailles, April 21, 1764, should be noted in this place, as they are decisive of the relative positions of the parties to that act, and of the extent of their powers posterior thereto, over the territories or persons comprised within its provisions. Nothing surely can be more comprehensive or absolute than the transfer announced by the King of France, or the declaration of his relinquishment of all power or rights in the subject transferred. The language of the French king to D'Abadie, director general and commandant of Louisiana, is as follows:

" 'Having ceded to my very dear and best beloved cousin, the King of Spain, and to his successors in full property, purely and simply, without exceptions, the whole country known by the name of

Louisiana'—he proceeds to command his director general that, on the receipt of his instructions, 'whether they come to your hands by the officers of his Catholic majesty, or directly by such French vessels as may be charged with the same, you are to deliver up to the governor or officer appointed for that purpose by the king of Spain, the said country and colony of Louisiana, and the posts thereon depending, likewise the city and island of New Orleans, in such state and condition as they shall be found to be in on the day of said cession; being willing in all time to come that they shall belong to his Catholic majesty, to be governed and administered by his governors and officers, and be possessed by him in full property and without exceptions.'

" 'The cases of the *United States vs. Reynes*, 9 How. 127 (13 L. Ed. 74), and of *Davis vs. Police Jury of Concordia*, 9 How. 280 (13 L. Ed. 138), decided at the last term of this court, devolved upon it the necessity for a particular examination of the rules and principles applicable to the construction of treaties; and, in the adjudication of the cases above mentioned, the following rules are either explicitly affirmed or necessarily implied: That compacts between governments or nations, like those between individuals, should be interpreted according to the natural, fair, and received acceptation of the terms in which they are expressed. That the obligations of such compacts, unless suspended by some condition or stipulation therein contained, commences with their execution, by the authorized agents of the contracting parties; and that their subsequent ratification by the principals themselves has relation to the period of signature. That any act or proceeding, therefore, between the signing and the ratification of

a treaty, by either of the contracting parties, in contravention of the stipulations of the compact, would be a fraud upon the other party, and could have no validity consistently with a recognition of the compact itself. As a regular corollary from these principles, and as deducible from the law of reason and the law of nations, it was ruled in the cases just mentioned that a nation which has ceded away her sovereignty and dominion over a territory could, with respect to that territory, rightfully exert no power by which the dominion and sovereignty so ceded would be impaired or diminished. (*United States vs. Reynes*) 9 How. 148, 149; (13 L. Ed. 74), and (*Davis vs. Police Jury of Concordia*) 9 How. 289, 290, 291 (13 L. Ed. 138).

" 'In the cases just cited, and particularly in that of the *United States vs. Reynes*, it becomes proper to examine the rights of a ceding and retiring government as a government *de facto* over the territory ceded. This examination was induced by the circumstance that the claimant against the United States rested his pretensions, in a great degree, upon the position that, after the treaty of St. Ildefonso, and anterior to an actual delivery to the French authorities, the government of Spain, as a government *de facto*, retained the rights of sovereignty and dominion over the territory of Louisiana, and, as incident thereto, the power of granting away the public domain. But this court distinguished between the proceedings of an adversary government, acting in the character and capacity of an independent perfect sovereignty, unaffected by any stipulation, and acts done in fraud, or in violation of express concessions or compacts. It is said that the former, as the acts of a government de facto, might be respected and sanctioned by a succeeding power; the

latter could impose no obligation to respect them, because they would have been performed in bad faith, and in violation of acknowledged rights existing in others. Admitting the absolute verity of the document under which the appellees deduce their title, and about which no serious question appears to have been raised, can the validity of this title be sustained consistently with the rules and principles propounded above, and in the cases to which reference has been made? The grant from Aubry and Foucault, the commandant and director of the province of Louisiana, to the ancestor of the appellees, bears date on the 2nd of March, 1765, between two and three years posterior in time to the cession of the province by France to Spain, and rather more than ten months after the order from the French monarch for the actual delivery of the territory to the Spanish authorities. Under these circumstances, then, the act of the French officers must be regarded as wholly unauthorized and inoperative to vest any title in the ancestor of the appellees, those acts being inconsistent with the existing relations between the kingdoms of France and Spain. It is true that Spain, during the continuance of her sovereignty and possession in Louisiana, might have adopted and confirmed this grant, but no such recognition thereof by Spain is shown or pretended; so far from there being proof or such recognition, it appears that a large portion of the lands comprised within this grant was bestowed by the Spanish government upon other grantees. Neither is there in the record proof of allegation that, during the short reign of the French republic, under the treaty of retrocession, the claim of D'Auterive was sanctioned, or even brought to the notice of that republic.

" 'It follows, then, from the view of this case here taken, that the claim of the appellees cannot be sustained upon any general and controlling principle of the law of nations, nor upon any stipulation between the powers holding the territory of Louisiana, prior to its transfer to the United States. The fate of this claim must depend exclusively upon the authority and the acts of the government of this country, and we will now consider how far it is affected by those acts and that authority. It has been heretofore repeatedly ruled by this court that the control and recognition of claims like that now before us were subjects belonging peculiarly to the political power of the government; and that, in the adjudication of the claims, the courts of the United States expound and enforce the ordinances of the political power. Guided by these rules, and looking to the acts of the Legislature, we find it declared by the act of Congress of March 26, 1804, p. 14 (2 Stats. at Large, 287): 'That all grants for land within the territories ceded by the French republic to the United States by the treaty of the 30th of April, 1803, the title whereof was, at the date of the treaty of St. Ildefonso, in the crown or government of Spain, and every act and proceeding subsequent thereto, of whatsoever nature, towards the obtaining any grant, title, or claim to such lands, and under whatsoever authority transacted or pretended, be, and the same are hereby declared to be, and from the beginning to have been, null, void and of no effect in law or in equity.'

" 'Within the comprehensive language of this provision the case before us necessarily falls; as the inefficiency of the French concession, after the treaty of Fontainebleau, to convey any title, left the title in the government of Spain, where it remained

up to, and at the date of, the treaty of St. Ildefonso. The reservation in the proviso to the section just quoted, in favor of actual settlers under the laws, customs, and usages of Spain, cannot include the case under consideration, as this is not an instance of a title asserted upon any such laws or usages, or founded on mere settlement; but one professing to be founded upon the grant made by the French commandant, independently of the authority of Spain, and exceeding in extent the quantity of land awarded to settlers by the proviso above mentioned.' "

"And, again, in the case of the *United States vs. Ducros*, 15 How. 38, 14 L. Ed. 591, the court say:

" 'A grant of land in Louisiana by the French authorities in 1764 is void. The province was ceded to Spain in 1762. In 1793 certain legal proceedings were had before Baron de Carondelet in his judicial capacity, wherein the property now claimed was described as part of the estate of the grantor of the present claimant. But this did not amount to a confirmation of the title in his political character.' "

"The act of Congress (2 Stat. p. 324) referred to in the D'Auterive opinion treats of three classes of titles. The first section deals with persons or legal representatives of persons who on the first day of October, 1800, were residents of the territory and had obtained from France or Spain, respectively, during the time that said governments had been in actual possession of the territory, and had had duly registered warrants or orders of survey for lands lying within said territory to which the Indian title had been extinguished, and which were on that day, to-wit, October 1, 1800, actually inhabited and cultivated by said person or persons for his or their use, and that said person or persons were the head of a family and above the age of 21 years.

" 'Any person or persons possessing all of the above requirements could have their titles completed and confirmed, provided they produced the evidence before the board of commissioners as required by said act.

" 'Section 2 relates to persons above the age of 21 who had, prior to the 20th of December, 1803, with the permission of some Spanish officer and in conformity with the laws and customs and usages of the Spanish government, actually settled on said land. These persons were granted authority, under certain conditions, to have their claims confirmed.

" 'The third class of titles covered by this act are found in Section 4, which section refers to 'legal French or Spanish grants made and completed prior to the 1st of October, 1800.'

" 'This act of the Congress provides, in Section 4, that all persons making claims to land, either under the provisions of Section 1, 2, or 4, must register same in accordance with the provisions of the act.

" 'Persons who claimed land under the provision of Sections 1 or 2 of the act were required to make proof to the board of commissioners that they possessed the land in accordance with the pre-requisites of those sections before their title could be confirmed; but persons who possessed complete 'legal' French or Spanish grants were not required to make any proof except the original grant.'

"The concluding portion of Section 4, which refers to all and any grants, provides:

" 'And if such persons shall neglect to deliver such notice in writing of his claim, together with a plat as aforesaid, or caused to be recorded some written evidence of the same, all his right, so far as the same is derived from the first two sections of this act, shall become void, and forever thereafter be

barred; nor shall any incomplete grant, warrant, order of survey, deed of conveyance, or other written evidence, which shall not be recorded as above directed, ever after be considered or admitted as evidence in any court of the United States, against any grant derived from the United States.'

"And so, in the case before us, we hold that the act of the French officer, Aubry, if he ever acted, was wholly unauthorized, and it was inoperative to vest any title in the ancestor of appellant, as that act would have been inconsistent with the existing relations between the kingdoms of France and Spain, particularly in view of the act of Congress stated above to the effect that incomplete grants not recorded are null and void, and shall not be considered or admitted in evidence. The inchoate or incomplete title set up by defendant has not been registered with any board of commissioners appointed by the United States which have authority to investigate and confirm land grants in Louisiana. The court cannot therefore receive in evidence the suggested grant to Terascon, or the survey tendered. *Lobdell vs. Clarke*, 4 La. Ann. 99. The grant is not in the records of the American State Papers, where it would be found, even if the records of the government of Louisiana were destroyed by fire in 1788, as was suggested by defendant might have been the case.

"The decision in the D'Auterive Case was approved in *Coffey vs. Groover*, 123 U. S. 1, 8 Sup. Ct. 1, 31, L. Ed. 51, wherein it was held that the existence of a *de facto* government would not influence the decision on the points involved. To the same effect are the decisions in the four cases of the *United States vs. Pillerin et al.*, 13 How. 9, 14 L. Ed. 28, where the D'Auterive Case was again referred to

and upheld, to the effect that grants must be made by competent authority to fall within the terms of the treaty and the laws. See, also, *United States vs. Ducros*, 15 How. 38, 14 L. Ed. 591, and *Arceneaux vs. DeBenoit*, 21 La. Ann. 673.

"The argument by defendant to the effect that, as a grant was made to Terascon by the French officer, Aubry, during the Spanish regime, and that France subsequently came into possession of Louisiana, that the grant became binding upon France, is without merit. If Aubry ever made the grant to Terascon, he was not acting for France at the time; and, as France did not grant to Terascon through or by Aubry, it was not bound by anything Aubry had done when it came into possession of the land again by cession from Spain."

The case of *Board of Directors vs. New Orleans Land Company* was expressly affirmed and approved in the case of *Leader Realty Co. vs. Lakeview Land Co.*, 142 La., pp. 176-178, in which the New Orleans Land Company was the real defendant. In the latter case, the court said through Mr. Justice O'Neill, discussing the same titles relied upon by defendant in error:

"Thus far, the defendants, tracing their chain of title backward in time, have shown a title upon its face translative of the property in contest. But the plaintiff has shown an unbroken chain of title from the government of the United States, and in order to defeat that title (eliminating questions of prescription), it devolved upon the defendants to show a title antedating that of the plaintiff, from one of the plaintiff's authors or vendors. The defendants do not claim title from the plaintiff's immediate vendor, Dr. Smythe, who acquired title from the

state in 1874. They claim title from the state by virtue of Acts No. 165 of 1858, and No. 30 of 1871, and by virtue of a plea of estoppel which will be referred to hereafter. They claim, primarily, that the title did not pass to the state under the swamp land grant of 1849, but was embraced within prior grants by the French or Spanish government, approved by the United States.

"The Morant title acquired by the board of commissioners of the First drainage district embraces a tract lying immediately south of the Milne concession, B. 164, and extending from Bayou St. John west to Milne street, thus embracing the southern portion of the land in contest. It embraces also what has been surveyed by the United States government as a fractional sixteenth section in place, adjoining on the east the southern portion of the land in contest. The defendants thus trace title to that part of the land in contest to one Don Carlos Tarascon. The only evidence of a grant or concession to Tarascon is the declaration made in a deed by him to one Andre Jung, of date the 3rd of July, 1773, that the land was held by him (Tarascon) 'by concession made to him by Monsr. Aubry, French Governor, at the time of his domination, before Stanr. Foucoult, Commissary, as appears in the titles that he delivered to the purchaser.' There is threfore no more evidence of a concession to Tarascon in this case than there was in the case of *Board of School Directors vs. New Orleans Land Co.*, 138 La. 32, 70 South. 27. **The reasons for holding that the New Orleans Land Company failed to prove that a valid or complete concession—or a concession at all—from the French or Spanish government was made to Tarascon are fully set forth in the opinion rendered in that case. Although the decision then**

rendered did not (because of the plaintiff's lack of authority to prosecute the suit) become final, the reasons for holding that there was no proof of a concession from France or Spain to Tarascon are entirely applicable to the present case, and it would serve no useful purpose to repeat them. It is sufficient to say that, in this case as in that, the defendant failed to prove that there was any prior grant or concession conflicting with the right of the United States government to grant the land, as it did to the state of Louisiana."

Therefore, it would seem well established that the alleged Tarascon grant, even if it be presumed to have been made from the self-serving statement in the act of sale by Tarascon to Jung, in 1773, was made by one without authority and therefore was absolutely null and void when made.

SECOND ASSIGNMENT OF ERROR.

The defendant in error made a very extensive argument in the Supreme Court of Louisiana, to the effect that the null and void grant by Aubry to Tarascon was confirmed by the Government of Spain after the arrival of O'Reilly and his forcible ejectment of Aubry's government from the possession of the territory of Louisiana. If there was adopted any general law or order from the King of Spain or any of his viceroys, governors or other officers, it would have affected all of such grants alike and would have applied with equal force to all the cases in which your Honors have held the French grants, after the cession of the territory to Spain, to be null and void. The ordinances of O'Reilly, Gayoso, Morales and the King of Spain could

not avail defendant in error any more than they would have any other person. Therefore, we submit that the cases decided by your Honors, many years after Louisiana had come into the possession of the United States, are conclusive of any contention that there was a general confirmation by law of such grants.

The only evidence relied on by counsel for defendant in error to show that the concession was, particularly, recognized by the Spanish authorities, lies in the fact that there were three transfers of title passed before Almonester, who is admitted to have been merely a Notary Public commissioned by the Spanish government.

The mere fact that people claiming to own this alleged concession appeared before a **Spanish Notary Public** and transferred their rights, constituted no title or grant from the Spanish government. Your Honors have settled this very effectively by your decision in the case of *Ducros vs. the United States*, 15 Howard, page 38. In that case Ducros was claiming the ownership of the property under a concession made by D'Abadie, the French governor, in 1764, after the cession of Louisiana by the King of France to the King of Spain, but before the delivery of the territory, and while the affairs of Louisiana were being administered by the French. The property was possessed by the predecessors in title of Ducros under the concession from 1764 to 1824, sixty years. In 1793, the title to the concession having become vested in the estate of Louis Toutant Beauregard, by proceedings conducted before Baron Carondelet, then the Spanish governor, acting in his quality as probate judge, the property was sold to Donna Magdelina Cartier. In the proceeding,

the property was inventoried and appraised as belonging to the succession. It was claimed that, as Baron Carondelet was vested with full authority to make grants of lands in Louisiana, the said legal proceedings constituted full recognition and confirmation by the Spanish authorities of the French concession. Your Honors disposed of that contention in the following language:

> "And secondly, the proceedings before Carondelet in 1793, in the settlement of the estate of Louis Toutant Beauregard, could not be construed as a confirmation of the French grant from the mere circumstance that in the inventory decedent's estate is described as running back to the Lake."
>
> "Carondelet could not be said to confirm, in his political capacity a title which is not even stated in the mere formal proceedings before him in his judicial capacity."
>
> 15 Howard, page 38.

We repeat, there is no evidence showing possession, even giving the description contained in the acts of sale passed in 1773, 1774 and 1777, and the declaration in the act of 1777 that there was at that time on the property two cows and four calves, the effect contended for by defendant in error, for as long a time as ten years.

There has been shown no such length or quality of possession as would warrant the conclusion that the title had been confirmed by the Spanish authorities or that the defendant in error is the holder of a title by prescription that had become absolute against the Spanish government, prior to the acquisition of Louisiana by the United States. The laws and regulations of the Spanish Government in force in Louisiana with respect to lands in the territory of

Louisiana have been compiled by Mr. White under instructions from John Quincy Adams, when president of the United States, by authority of Congress, and are available in White's New Recopilacion, Volume Two.

The first order relied on by counsel for defendant in error is found in the Royal Proclamation of October 15th, 1754 (While's Recopilacion, Vol. 2, p. 67), and this is pertinent only because the learned counsel for defendant in error contends that in it is found the law of prescription that protects one holding such possession as has been shown in this case against disturbance by the Spanish authorities. As a matter of fact, there is no such provision found in the proclamation. The first section of this regulation invests the right to make land grants in viceroys and presidents of royal audiences. The second section gives certain officers jurisdiction of the sale and composition of royal lands, and enjoins them to deal gently with all settlers. The third section provides for the proving up of titles. The fourth section is the part of the regulations reproduced in the brief filed by counsel for defendant in error and obviously refers only to those persons in possession of royal lands prior to the year 1700. This section reads as follows:

> "If it shall appear from the warrants or writings so presented or from other legal authority, that those persons are in possession of such royal lands, by virtue of a sale, or composition made by the subdelegates so empowered before the said year 1700, although these acts may not have been confirmed by my royal person, nor by the Viceroys and Presidents, they shall still be suffered to retain free and quiet possession of them, without being caused the

least molestation, or deprived of any rights by these orders, conformable with the 15th Law, Title 12, Lib. 4, of the Recopilacion de Indias, already cited.

"On these warrants it shall be noted, that the persons have complied with the obligation of exhibiting them, so that they may not in future be disturbed in, or sued for their royal lands, they nor their successors. If persons had not warrants their proof of long possession shall be held as a title by prescription. If they shall not have tilled or cultivated these lands, the term of three months prescribed by the 11th Law of the said Title and Book, shall be allowed them or whatever time may be thought sufficient for this purpose and notice shall be given them, that, if they fail to cultivate their lands, they shall be granted to those who shall lodge information thereof, under the same conditions of cultivating them."

The 5th section provides methods by which persons who have been in possession of land from 1700 to the date of the regulation 1754 should proceed to have their titles confirmed.

The other sections of the regulations do not appear to be at all relevant and have not been invoked by counsel for defendant in error.

The next regulation is that of O'Reilly, captain general of Louisiana, who seems to have exercised the powers of viceroy, published on the 18th of February, 1770, and found at page 228 of White's Recopilacion, Volume 2.

The following is a copy of sections 1, 2, 3 and 12 of O'Reilly's regulations, sections 2 and 3 of which are the only ones which are invoked by counsel for defendant in error:

"1. There shall be granted to each newly arrived family who may wish to establish themselves on the

border of the river, six or eight arpents in front (according to the means of the cultivator) by forty arpents in depth, in order that they may have the benefit of the cypress wood which is as necessary as useful to the inhabitants.

"2. The grantees, established on the borders of the river shall be held bound to make within the first three years of possession, mounds sufficient for the preservation of the land, and ditches necessary to carry off the water. They shall, besides, keep the roads in good repair, of the width of at least 40 feet between the inner ditch which runs along the mound and the barrier with bridges of 12 feet over the ditches which may cross the road. The said grantees shall be held bound, within the said term of three years' possession to clear the whole front of their land to the depth of two arpents; and, in default of fulfilling these conditions, their land shall revert to the King's Domain and be granted anew; and the Judge of each place shall be responsible to the Governor for the superintendence of this object.

"3. The said grants can neither be sold nor aliened by the proprietors, until after three years of possession, and until the above mentioned conditions have been entirely fulfilled. To guard against every evasion in this respect, the sales of the said lands cannot be madee without a written condition from the Governor General, who will not grant it until, on strict inquiry, it shall be found that the conditions above explained have been duly executed.

"12. All grants shall be made in the name of the King by the Governor General of the Province, who will, at the same time appoint a surveyor to fix the bounds thereof, both in front and depth, in presence of the Judge Ordinary of the District, and of two adjoining settlers who shall be present at the

> survey. The above mentioned four persons shall sign the verbal process which shall be made thereof and the surveyor shall make three copies of the same, one of which shall be deposited in the office of the Scrivener of the Governor, and Cabildo, another shall be delivered to the Governor General, and the third to the Proprietor, to be annexed to the titles of his grant."

The second and third sections are reproduced in the brief filed by defendant in error, and it was argued that as the property covered by the alleged Tarascon Grant had been sold three times during the Spanish regime, from section 3, the Court must presume that the Spanish government had consented to the transfer.

This argument appears to be frivolous when the regulations are examined in connection with it, for sections 2 and 3 refer, in terms, to grantees on the borders of the Mississippi river. The property covered by the Tarascon grant is not on, or anywhere near, the river. It fronts on Bayou St. John.

The Regulations of Governor Gayoso are found at page 231 *et seq.*, Vol. 2, of White's Recopilacion, and contain nothing relevant to the case under discussion.

The Regulations of Morales, who was Intendant in 1798 and subsequently of the territory of Louisiana, and who was, by royal order, invested with the power to make land grants in the Territory, are found at page 234 *et seq.*, Vol. Two, of White's Recopilacion. The articles of these regulations that are pertinent to this case are as follows:

Article XV.

"All concessions shall be given in the name of the king, by the general intendant of this province, who shall order the surveyor-general or one particularly named by him to make the survey, and mark the land by fixing bounds, not only in the front, but also in the rear; this (survey) ought to be done in the presence of the commandant or the syndic of the district and of two neighbors, and these four shall sign the proces-verbal which shall be drawn up by the surveyor.

Article XVI.

"The said proces-verbal, with a certified copy of the same, shall be sent by the surveyor to the intendant, to the end that on the original there be delivered, by the consent of the king's attorney, the necessary title paper; to this will be annexed the certified copy forwarded by the surveyor. The original shall be deposited in the office of the secretary of the treasury, and care shall be taken to make annually a book of all which have been sent, with an alphabetical list, to be the more useful when it is necessary to have recourse to it, and for greater security to the end that at all times and against all accidents, the documents which shall be wanted can be found. The surveyor shall also have another book, numbered in (213) which the proces-verbal of the survey he makes shall be recorded, and as well as the original, which ought to be deposited on the record, as on the copy intended to be annexed to the title, he shall note the folio of the book in which he has enregistered the figurative plat of survey.

Article XVII.

"In the offices of the finances there shall also be a book numbered, where the titles of concessions

shall be recorded; in which beside the ordinary clauses, mention shall be made of the folio of the book in which they are transcribed; there must also be a note taken in the contadoria or chamber of accounts of the army and finances and that under the penalty of being void. The chamber of accounts shall also have a like book, and at the time of taking the note shall cite the folio of the book where it is recorded.

Article XVIII.

"Experience proves that a great number of those who have asked for land think themselves the legal owners of it; those who have obtained the first degree by which the surveyor is ordered to measure it and put them in possession, others after the survey has been made, have neglected to ask the title for the property; and as like abuses continuing for a longer time will augment the confusion and disorder which will necessarily result;—We declare that no one of those who have obtained the said degrees, notwithstanding in virtue of them the survey has taken place, and that they have been put in possession, can be regarded as owners of land until their real titles are delivered completed with all the formalities before recited.

Article XIX.

"All those who possess lands in virtue of formal titles, (*titres formels*) given by their excellencies the governors of this province since the epoch when it became under the power of the Spanish and those who possessed them in the time when it belonged to France, so far from being interrupted, shall, on the contrary, be protected and maintained in their possessions.

Article XX.

"Those who, without the title or possession mentioned in the preceding article, are found occupying lands, shall be driven therefrom as from property belonging to the crown; but if they have occupied the same more than ten years, a compromise will be admitted to those who are considered as owners, that is to say, they shall not be deprived of their lands. Always that after information and summary procedure, and with the intervention of the procurer of the king at the board of the treasury, they shall be obliged to pay a just and moderate retribution, calculated according to the extent of the lands, their situation, and other circumstances, and the price of estimation for once paid into the royal treasury. The titles to property will be delivered on referring to that which has resulted from the proceedings.

Article XXI.

"Those who are found in the situation expressed in the 18th article, if they have not cleared, nor done any work upon the land, (214) they consider themselves proprietors of, by the virtue of the first decree of the government, not being of the number of those who have been admitted in the class of newcomers, in being deprived or admitted to compromise in the manner explained in the preceding article if they are of that class, they shall observe what is ordered in the article following.

Article XXII.

"In the precise and peremptory term of six months, counting from the day when this regulation shall be published in each post, all those who occupy lands without title from the governor, and those who, in having obtained a certain number of arpents,

have seized a great quantity ought to make it known, either to have their titles made out, if there is any, or to be admitted to a compromise, or to declare that the said lands belong to the domain, if they have not been occupied more than ten years, understanding if it passes the said term, if they are instructed by other ways, they will not obtain either title or compromise.

Article XXVIII.

"The titles to the property of land which are sold or granted by way of compromise, shall be issued by the general intendant, who after the price of estimation is fixed, and of the MEDIA ANNATA, (half years,) or rent, or quit rent, the said price of estimation shall have been paid into the treasury, shall put it in writing, according to the result of the proceeding which has taken place with the intervention of the king's attorney."

Counsel for defendant in error in the lower court contended that article XX[illegible] of Morales's Regulations was a general confirmation of all grants made by France from the treaty of Fontainbleau to the taking possession of the territory by force by O'Reilly. We cannot give the language used any such meaning.

The words "their excellence, the governors of this province since the epoch when it first came under the power of the Spanish government" cannot be construed to mean Aubry who usurped control of the Territory, contrary to the instructions of the French King, and in violation of the rights of Spain and remained in possession of the government from the death of D'Abadie, the French governor, until ejected by O'Reilly, nor can the words "those who pos-

sessed them in the time when it **belonged** to France" be construed to refer to those who possessed at the time when France was no longer **the owner** of the territory.

In their brief in the Supreme Court of Louisiana, counsel for defendant in error, did not quote article XIX correctly. We presume with no intention, but through inadvertence.

Counsel for defendant in error also contend that where persons had possessed land without title for more than ten years, their ownership was complete and was fully protected by the treaty of Paris by which the United States acquired the territory of Louisiana, that they could not be disturbed. This contention is negatived by the language of article XX, which gives such possessors the right to obtain a compromise by proceeding as therein provided, and by article XXVIII, which says, the title to property which is sold or granted by way of compromise shall be issued by the **General-Intendant,** after the price is fixed, and also by the language employed in article XXII, requiring that the proceeding be undertaken within six months from the promulgation of Morales's Regulations.

All of the regulations in force from the occupation by O'Reilly on, provided for a most formal proceeding, before the title to crown land could become complete, and such land severed from the ownership of the king.

The provisions in Section 12 of O'Reilly's Regulations requiring a series of formal acts to obtain a complete title to crown lands are continued in the regulations of both Gayoso and Morales; and the thought that one could obtain a perfect title by prescription to royal lands is completely negatived by the Regulations of Morales requiring parties in possession without title, who have held possession for

more than ten years to enter a proceeding to have their titles confirmed and providing that such persons could obtain a formal title from the **Intendant,** only after such proceeding.

Opposed to the positive language of the aforesaid regulations, which is the law regulating the subject, we have been able to find no authorities.

Counsel for defendant in error has submitted that this Court in the case of *United States vs. Armand Pillerin et als,* 13 Howard, page 9 has overruled the Dauterive case, 10 Howard page 609, and the Ducros case, 15 Howard, page 38, and a dozen or more other cases strictly in line prior and subsequent to the Pillerin case. The writer after carefully considering the Pillerin case is unable to see anything in it contrary to the jurisprudence of this court or the Spanish law.

All that is said in the Pillerin case, of which the Court declined jurisdiction, that would even tend to favor the contention of counsel for defednant in error, is this:

> "But, if there has been such a continued possession and actual ownership over the land as would lay the foundation for presuming a confirmation by Spain of these grants or either of them, such confirmation would account to an absolute title, and not an inchoate or imperfect one."

Of course, much might be said on the subject if this case presented features that would lay the foundation for the presumption of a confirmation by the Spanish government, but, there is no evidence in this case that could be reasonably held to show any intention of the Spanish gov-

ernment to confirm the alleged Tarascon grant.

The opinion in the Pillerin case (13 Howard page 9) is as follows:

> "These four cases are all French grants made after the treaty of Fontainbleau, by which Louisiana was ceded to Spain. We have already decided the cases of the *United States vs. D. Reynes*, 9 How. 127, and the *United States vs. D'Auterive* 10, How. 607, that grants of this description are void, unless confirmed by the Spanish authorities before the cession to the United States.
>
> "In some of these cases evidence has been offered of continual possession by the grantees of those claiming under them, ever since the grants were made. But if there has been such a continued possession, and acts of ownership over the land as would lay the foundation for presuming a confirmation by Spain of these grants, or either of them or any portion of either of them, such confirmation would amount to an absolute title, and not an inchoate or imperfect one. For all of the grants are absolute, or upon conditions subsequent; and if they have been originally made by competent authority, would have passed the legal title at the time, subject only to be divested by a breach of the condition, in the cases where a condition subsequent is annexed. Such a title, if afterwards recognized by the Spanish authorities, is protected by the treaty, and is independent of any legislation by Congress, and requires no proceeding in a court of the United States to give it validity."
>
> "The act of 1824 is very clear upon this point, and it has always been so construed by this court, titles of this description were not therefore embraced in the acts of 1824 and 1844 under which

these proceedings were had. These laws were passed to enable persons who had only an inchoate equitable title to obtain an absolute and legal one, proceeding in the district court in the manner prescribed. And when divested by a breach of the conditions in the cases where the condition subsequent is annexed.

"Such a title if afterwards recognized by the Spanish authorities, is protected by the treaty, and is independent of any legislation by Congress, and requires no proceedings in a court of the United States to give it validity.

"Upon this ground, the decrees of the district court in each of these cases is erroneous and must be reversed and a mandate issued directing the petitions to be dismissed for want of jurisdiction.

"But this decision is not to prejudice the rights of the respective petitioners or either one of them in any suit where the absolute and legal title to these lands or any portion of them may be in question, or prevent them from showing, if they can, that the French grant was recognized as valid and confirmed by the Spanish authorities before the treaty of St. Ildefonso, by Spain of these grants or either of them, such confirmation would amount to an absolute title, and not an inchoate, or imperfect one. For all of the grants are absolute, or upon conditions subsequent and if they had been originally made by competent authority, would have possessed the legal title at the time, confirmed by the Spanish authorities before the cession to the United States. In some of these cases, evidence has been offered of continual possession by the grants of those claiming under them, ever since the grants were made.

"But, if there has been such a continual possession, and acts of ownership over the land it

would lay the foundation for presuming a confirmation.

Another case relied on by counsel for defendant in error to support the alleged confirmation by the Spanish government, and which the writer firmly believes is no authority at all is the case of *Duvall vs. Chopin*, 15 La., pp. 574 and 575. This case went off entirely on the question of prescription which was pleaded by defendant and sustained by the court. The language quoted by counsel for defendant in error consists of the middle of a paragraph. If the entire paragraph had been quoted it would have been apparent on the face of their brief that this case was not an authority in their favor, but against them, and that the language quoted was mere **obiter.** The entire paragraph is as follows:

> After a careful consideration of the facts of the case, and an attentive examination of the rights of the parties, we have come to the conclusion that it has become unnecessary for us to inquire deeply into the validity of their respective titles. We are not disposed to question the authority of the French Commandant at Pointe Coupee to put a settler in the possession of the public domain by a written permission or grant which, showing the extent of the tract conceded, and accompanied with proofs of long occupancy, might afterwards be considered by his government as a sufficient title; indeed, such a title has very often been recognized subsequently by the Spanish authorities, to be an absolute abandonment of the king's domain, and in a great many instances has been made the foundation, as in the present case, of favorable reports on which the government of the United States, has confirmed a great many of private land claims. The jurisprudence of the Su-

preme Court of the United States on this question, established the principle, "that the acts of an officer to whom a public duty is assigned by his king, within the sphere of that duty, are *prima facie* taken to be within his power, and that he who controverts a grant executed by the lawful authority, takes on himself the burden of showing, that the officer has trancended the powers conferred on him." 12 Peters' Reports, 437; 8 idem., 452-3-5, 664; 9 idem., 134, 734; 6 idem; 727; 10 idem; 331. The rule applied also to the judicial proceedings of local officers, to pass the title of land according to the cause and practice of the Spanish law in the province of West Florida, 8 idem., 310. "When the act done is contrary to the written of the king, it shall be presumed that the power has not been exceeded, and that the act was done according to some order known to the king and his officers." 7 idem; 96; 8 idem; 447, 451. "And courts of justice ought to acquire very full proof that he had trancended his powers, before they so determine it." 9 idem; 464, 734. We conclude, therefore, that the authority of the French commandant, cannot properly be inquired into in this case. In relation to the question raised by plaintiff, whether the French authorities had the right to grant lands in Louisiana in 1767, it will be conceded that it comes rather late and with bad grace from a party who suffered his titles to lay dormant for half a century; and as we deem it entirly useless to make it a matter of serious investigation in this suit, let it be sufficient for us to remark, that it is historically known that the Spanish government never contested the validity of the grants made by the French officers before the Spaniards took possession of the colony; that the conduct of Spain amounts to at least a tacit ratification; and that the government of the United States, by the 4th section of the act of 2nd March, 1805, has expressly declared

that all French grants made while the French government had the actual possession of the territory of Louisiana, should be recognized and protected. 1 Land Laws, 519, 2 White's New Recopilacion, 569. In this case, both parties have obtained the confirmation of the United States by the same act of Congress, they therefore stand upon an equality with regard to our government; but, altho, if their rights were to be tested on the strength of their respective titles the plaintiff might perhaps succeed: **we think it is only necessary for us to examine if the defendants have not acquired such title by prescription as to be sufficient to destroy the plaintiff's pretensions.** 15 La., p. 574 *et seq.* (Black type ours.)

Your honors will observe that the court states that if the rights of the parties were to be tested by the strength of their titles, the plaintiff might perhaps succeed. "We think it only necessary for us to examine of the defendant has not acquired such title by prescription as to be considered sufficient to destroy plaintiff's contention." 15 La. 576.

Counsel for defendant in error also relied on a royal order of the King given at Barcelona, on the 15th of October, 1802, and the proclamation of Casa Calvo issued May 18th, 1803, as confirming all of the grants made by Aubry. In reply to this suggestion it is only necessary to call the attention of the Court to Chapter 70 of acts of Congress of the year 1804, Section 14, which reads as follows:

"Section 14. That all grants for lands within the territories ceded by the French republic to the United States, by the treaty of the thirtieth of April, in the year 1803, the title whereof was, at the date of the treaty of St. Ildefonso, in the crown, govern-

ment, or nation of Spain. and every act and proceeding subsequent thereto, of whatsoever nature, towards the obtaining any grant, title or claim, to such lands, and under whatsoever authority transacted, or pretended, be, and the same are hereby, declared to be, and to have been from the beginning, null, void, and of no effect in law or equity; Provided, nevertheless, That any thing in this section contained shall not be construed to make null and void any *bona fide* grant, made agreeably to the laws, usages, and customs, of the Spanish government, to an actual settler on the land so granted, for himself, and for his wife and family; or to make null and void any bona fide act or proceeding done by an actual settler, agreeably to the laws, usages, and customs, of the Spanish government, to obtain a grant for the lands actually settled on by the person or persons claiming title thereto, if such settlement, in either case, was actually made prior to the 20th December, 1803."

Therefore, it is submitted that the Supreme Court of Louisiana erred in holding that the null and void grant made by Aubry was ever in any manner confirmed by the King of Spain or his representative, or that a complete title became vested in Carlos Tarascon or his successors in title by a possession which was never made the basis of an application for a title by the alleged possessor in conformity with the Regulations of Morales.

THIRD ASSIGNMENT OF ERRORS

We think we have succeeded in showing above that when the United States took possession of Louisiana, the holder of the alleged Tarascon grant had at best an im-

perfect or inchoate title and at the date of the treaty of Paris was not in possession, or if in possession was so simply by the tolerance of the Spanish authorities. The United States, when it acquired Louisiana was bound by the treaty to protect all of the property rights of the inhabitants of the territory under the former governments, and to discharge its duty in this respect it provided that the rights of persons holding concessions from the governments in actual possession of the territory, made after the territory had been ceded to another government, should be protected, **provided** the owner of the grant was in actual possession of the property at the time the territory passed to the United States. On the 2nd day of March, 1805, Congress adopted "An Act for ascertaining and adjusting titles and claims to lands within the territory of Orleans district of Louisiana", being Chapter 26 of the Statutes at at Large of the United States of 1805. Section 2 makes it perfectly plain that the holders of such grants as that claimed to have made to Tarascon were first required to be confirmed before a legal title would vest in the holder of such a grant, and it was made a prerequisite to the right of applying to the United States to have his title confirmed, that he was in possession of the property on the 20th of December, 1803 by actually inhabiting and cultivating the land, and it was only the land thus inhabited and cultivated that would be granted.

Sections 2 and 4 of this act are as follows:

> "Sec. 2. And be it further enacted, That to every person, or the legal representative of every person, who being either the head of a family, or twenty-one years of age, had prior to the twentieth

day of December, one thousand eight hundred and three, with the permission of the proper Spanish officer, and in conformity with the laws, usages and customs of the Spanish government, made an actual settlement on a tract of land within the said territories, not claimed by virtue of the preceding section, or of any Spanish or French grant made and completed before the first day of October, one thousand eight hundred, and during the time the government which made such grant had the actual possession of the said territories, and who did on the twentieth day of December, one thousand eight hundred and three, actually inhabit and cultivate the said tract of land; the tract of land thus inhabited and cultivated, shall be granted; **Provided, however,** that not more than one tract shall be granted to any one person, and the same shall not contain more than one mile square, together with such other and further quantity, as heretofore has been allowed for the wife and family of such actual settler, agreeably to the laws, usages and customs of the Spanish government: **Provided,** also, that this donation shall not be made to any person who claims any other tract of land in the said territories by virtue of any French or Spanish grant."

"Sec. 4. Be it enacted, etc., That every person claiming lands in the above mentioned territories, by virtue of any legal French or Spanish grant, made and completed before the first day of October, 1800, and during the time the government which made such grant had the actual possession of the territories, may and every person claiming lands in the said territories, by virtue of the two first sections of this act, or by virtue of any grant or incomplete title, bearing date subsequent to the first day of October, 1800, shall, before the first day of March, 1806, deliver to the register of the land office, or recorder of the land titles, within whose district

the land may be, a notice in writing, stating the nature and extent of his claims, together with a plat of the tract or tracts claimed; and shall, also, on or before that day, deliver to the said register or recorder, for the purpose of being recorded, every grant, order of survey, deed, conveyance, or other written evidence of his claim; and the same shall be recorded by the register or recorder, or by the translator hereinafter mentioned, in books to be kept by them for that purpose on receiving from the parties at the rate of 12½ cents for every hundred words contained in such written evidence of their claim; Provided, however, That where lands are claimed by virtue of a complete Spanish or French grant, as aforesaid ,it shall not be necessary for the claimant to have any other evidence of his claim recorded, except the original grant or patent together with the warrant or order of survey, and the plat; but all the other conveyances or deed shall be deposited with the register or recorder to be by them laid before the commissioners hereinafter directed to be appointed, when they shall take the claim into consideration. And if such person shall neglect to deliver such notice, in writing, of his claim, together with a plat, as aforesaid, or cause to be recorded such written evidence of the same, all his right, so far as the same is derived from the first two sections of this act, shall become void, and forever thereafter be barred; nor shall any incomplete grant, warrant, order of survey, deed of conveyance, or other written evidence, which shall not be recorded as above directed, ever after be considered and admitted as evidence in any court of the United States, against any grant derived from the United States. The said register and recorder shall commence the duties hereby enjoined on them, on or before the first day of September next, and continue to discharge the

same at such place, in their respective districts, as the President of the United States shall direct."

The failure to apply for confirmation of such a title within the limit set forth in the foregoing section was forfeiture of all right to obtain a title granted by the first two sections of the act. As the United States took the place of the former governments in Louisiana, it was under the same obligation as those governments were to the inhabitants. The United States had the right to act with respect to inchoate or imperfect land titles, just the same as the government to which it had succeeded. If Spain had the right to require a person who had possessed land without title for **more than** ten years to enter a proceeding for a compromise and the payment of a just value to the Spanish government, the United States certainly had the right to pass the law it did requiring the possessor under a null and void title held from a government basing its right on territorial occupation only, to present his claim and proof that he had possession at the time the territory was acquired by the United States, under penalty of having his rights barred if he neglected to avail himself of the generosity of the government.

So we do not see how it could be reasonably argued that the title under discussion did not require confirmation by the United States.

FOURTH ASSIGNMENT OF ERRORS.

The Supreme Court of Louisiana held that it was unnecessary for the owner of the alleged Tarason grant to present the same to the Board of Commissioners created by

act of Congress of March 2nd, 1805, and have it recorded in accordance with the requirements of section 4 of that act, because it was a complete title.

This finding is in direct conflict with the language of section 4. Two classes of persons holding title are dealt with by this section; first, those holding **legal** French or Spanish grants; second, those persons enumerated in section one and two of the act. The second class were required to deliver to the register of the land office or recorder of land titles, notice in writing, stating the nature and extent of their claims, together with a plat of the tract or tracts claimed; "and shall also on or before that date, deliver to said register or recorder, for the purpose of being recorded, their grant, order of survey, conveyance, or other written evidence of this claim; and the same shall be recorded by the register or recorder or by the translator hereinafter mentioned, to be copied by them for that purpose." It was provided that where the lands were claimed by virtue of a "complete French or Spanish grant as aforesaid" (meaning legal French or Spanish grants), "it shall not be necessary for the claimant to have any other evidence of his claim or grant recorded, except the original grant or patent together with the warrant or order of survey and the plat. But all other conveyances or deeds shall be deposited with the register or recorder to be by them laid before the commissioners."

Then the law goes on to say:

> "And that if such person (meaning all of the classes referred to in the preceding part of the section) shall neglect to deliver said notice in writing of his claim together with the plat as aforesaid, or cause to be recorded such written evidence of the

> same, all of his right, so far as the same is derived from the first two sections of this act, shall be barred, and shall thereafter be barred; nor shall any incomplete grant, warrant, order of survey, deed of conveyance or other written evidence which shall not be recorded as above, ever after be considered or admitted as evidence in any court of the United States against any grant derived from the United States."

The contention of the writers is that the law required the registry of any and all titles of land, whether complete or imperfect and inchoate, under the penalty prescribed for failure to do so.

Let us consider what the conditions were with respect to Louisiana land titles at the time the law was passed.

When the United States entered into possession of Louisiana land titles could be well described as chaotic. Two fires had occurred in New Orleans—one in 1788, the other in 1794—and many of the records were burned. Besides, it was only natural, in a new country, that many were in possession of lands with no title at all. The condition was such that some orderly registry of claims to land was a necessity. Of course, it was necessary to public progress and the up-building of Louisiana that the public lands be disposed of to settlers. Louisiana's greatest need was population, and more population. To fulfill this want, the public domain had to disposed of by titles that would not, in the future, be uncertain. Thomas Jefferson, then president of the United States, realizing the conditions that prevailed, addressed to Congress a communication, which is quoted in brief of defendant in error. In this communication Mr. Jefferson stated:

"It is impossible to ascertain the quantity of lands granted without calling on the claimants to exhibit their titles, the registry being incomplete, and the maps made by the different surveyors general having been burnt in the fires of New Orleans of 1788 and 1794, no estimate has been obtained."

Acting on this communication and general information of conditions, Congress passed the law referred to above, which was entitled "An Act for ascertaining and adjusting titles and claims to lands within the territory of Orleans and the District of Louisiana." And the only possible method of "ascertaining" the title to lands was to require their registry. It would have been absolutely impossible for the United States to ascertain what was public land, what private, if under the conditions represented by counsel for defendant in error, to-wit: "that all of the Spanish and French records had either been destroyed or carried away," unless some records were compiled by which the government would obtain knowledge of all titles, complete as well as inchoate or imperfect. Therefore, in order to "ascertain" it was necessary for the government to have a registry of all titles and claims ,and unless the act required the registry of complete titles it fell short of its declared purpose. The government was most liberal in dealing with those holding claims to lands, and extended the time for the presentation of claims frequently until 1844. Notwithstanding the extreme leniency of the government no one claiming any rights under the alleged Terascon grant ever presented it for registry, and the penalty prescribed is, that it cannot now be offered in evidence against the grant held by plaintiffs in error emanating from the United States.

If any person in Louisiana possessed a title that represented a real right to land, there is no conceivable reason why such person would have neglected to present evidence of his title for registry. The necessity for registering titles has been passed on by this Court in numerous cases, and the leading case is that of *Struther vs. Lucas*, reported in the 12 Peters, p. 430. From the full statement of that case by Mr. Justice Baldwin your Honors will find that it would be impossible to conceive a more complete and legal title than that held by the plaintiff in that case, and yet, your Honors decided that, because it was never presented to be registered by the board of commissioners, in accordance with the requirements of section 4 of the act of Congress of 1805, all rights of the owner of the concession were barred: evidence of it could not be considered by the Court.

In order that your Honors may fully appreciate just how complete the title under discussion in that case was, we have reproduced the statement of the case made by Mr. Justice Baldwin:

> "The plaintiff brought an ejectment in the district court of Missouri to recover possession of two pieces or tracts of land formerly common field lots adjacent to the village and now a part of the City of St. Louis; a verdict and judgment was rendered for defendant, in which the plaintiff brought his writ of error. The whole merits of the case have been brought before us, by the whole evidence given in the trial and forty-three instructions asked, refused or given, spread out on the records; which present a case of great interest, as well in reference to the value of the property in controversy as the principles which are necessarily involved in its decision.
>
> "Rene Kiesereau and John B. Gamache were each in possession of one of these lots, at a very

early period after the founding of the village of St. Louis in 1764, while Louisiana was under the dominion of France, though she had ceded it to Spain two years before the secret treaty of Fontainebleau. Spain took possession of the province in 1769-70, from which time she held it till she ceded it to France in 1800; the laws of Spain were established in it, but the title of those who received grants from the local authorities, or made settlements, either in the villages or on the public domain, before the actual surrender of the province by France, were respected. Accordingly it appears, that in 1772, the following instrument was executed between the French and Spanish governors, which is found in the 3rd Vol. Am. State Papers—Public Lands, and is of the tenor and purport following: 'Translation of a French document marked C., published in the third volume of the American State Papers—Public Lands, p. 679, truly and faithfully made and written by me, Robert Greenhow, translator of foreign languages in the department of state of the United States.—Washington, February 26, 1838.

"'*Cadastre* (a) formed by me, Martin Duralde, Surveyor, appointed by Mons. Don Pedro Piernas, captain of infantry and lieutenant governor of the establishments and other dependencies of the Spanish government of the Illinois and deposited in the archives of the said government in form of proces verbal, to serve to designate the various tracts of land granted in the name of the king to the inhabitants of this post of St. Louis; as well by title (deed) as by verbal consent, by the chiefs who have governed them from the foundation (of the government) to this moment, which I have surveyed and which, after the exchanges, concessions or sales which may have been made of them, for the convenience or advantage of each person, are actually

in possession of the persons hereinafter named, agreeably to their own attestations and reciprocal acknowledgements, situated in the prairies contiguous to the same post, in the order and according to the directions detailed, as follows:

" 'I thus attest it by my signature, and by the unanimous acknowledgments of the above mentioned proprietors, assembled at this moment, with approbation of said Sr. Don Piernas, in the Chamber of the Government, to serve as mutual witnesses, and to affirm the fact, some of their signatures, the others, from not being able to sign, by their declarations in the presence of Messrs. Don Petro Piernas, the above mentioned lieutenant governor, and Don Louis St. Ange de Bellerin, retired captain and first predecessor in command at this post, both serving, to-wit: the latter to certify by his signature, in his said quality, and in virtue of the power confided to him, that he had granted either by title (deed) or verbally, the above mentioned lands, in the name of his majesty (the king of France); and my said Sr. Piernas, to approve, confirm and ratify likewise, by his signature, in his actual character of lieutenant governor whereby he is provided with the same power of granting (*conceder*) the possessions allowed to be good (*accordies*) (a) by my said Sieur St. Ange, and specified in the body of this cadastre, which I deposite, containing sixty-eight pages of writing, including the present, in the archives of this government, to be there preserved forever, and to serve for the uses, the assurance, authenticity and testimony of all therein set forth, at St. Louis, on the Twenty-third of May, in the Year One Thousand Seven Hundred and Seventy-two.'

"Pursuant to this most solemn act, surveys were made of the lots respectively claimed and possessed by Kiesgrau

and Gamache, by the public surveyor, and entered of record on the land book of the province, and they continued in the quiet enjoyment of the lots from that time, as they had previously held them, according to the laws, usages and customs of France, while under the government of Illinois.

"The plaintiff claims the premises in controversy under and in right of Gamache, by the following chain of title:

"1. By a deed made in 1781 from Marie Magdalena Robellar, the wife of Rene Kierserau, conveying one of the lots in question (being the one owned by Kierserau) containing one arpent in front, by forty in depth, to which, as plaintiff alleged, Kierserau was an assisting witness, whereby his right passed to the grantee of his wife, according to the law of Spain, in force in the province, the consideration was four hundred livres, equal to eighty dollars.

"2. By a deed of exchange made in 1773, between Chancellier and Gamache, whereby the latter conveyed to the former one half of his lot, being one half arpent in front by forty back, in exchange for an ox; and a half front arpent, by the same depth, which Chancellier had owned before.

"Both deeds were executed in the hall of the government, in the presence of the local governor, and signed by him. The witnesses of assistance in the matter were M. Duralde, the surveyor general, and Alvarez, a sergeant in the garrison; to the former the witnesses of assistance were, as named in the concluding clause of the deed, "Rene Guicero," and in the attestation, "Rene Kirgeaux," and Louis Rover.

"3. By a deed from one of the heirs of Gamache conveying to Basil and Marie Louise Laroque (formerly

Madame Chancellier) his right in and to the remaining half of Gamache's lot, for the consideration of one dollar. This deed bears date 22nd June, 1827.

"4. By deeds from Laroque and wife, made in March, 1827, and September, 1828, conveying to George F. Strother, the two arpents by forty, to which she claimed right under Gamache, Kierserau, and Chancellier in consideration of three hundred dollars.

"5. By deed from George F. Strother to Daniel F. Strother, the plaintiff, dated July, 1827, conveying the premises in controversy to him for the consideration of three hundred dollars.

"The title of Laroque and wife is thus deduced:

"Louis Chancellier took possession of the lots conveyed to him as before, held and cultivated them till his death, in 1785; when, by a judicial proceeding before the lieutenant governor, in his judicial capacity, conducted in conformity with the laws of Spain, the whole estate of Chancellier was inventoried, and appraised by sworn appraisers; the result of which was, that a final adjudication was made in 1787 by the governor, which was signed by him and the parties concerned, who consented thereto. By this adjudication, the real and personal estate of Chancellier, after the payment of his debts, was divided between his widow and their only child, according to the laws of distribution in the province; the one and a half arpents were allotted to the widow at one hundred and fifty livres, equal to thirty-one dollars, for the sixty arpents, being fifty-one cents per arpent; the half arpent was also allotted to her at eight livres, equal to one dollar sixty cents for the twenty arpents, being eight cents per arpent; which

is a little more than four-fifths of the English acre, the proportion between them being as one hundred of the former to eighty-five of the latter.

"Madame Chancellier married again in 1787 or 8, about two and a half years after Chancellier's death and immediately removed with her husband, one Beauchamp, to St. Charles, a village about twenty or twenty-five miles from St. Louis; where she continued to reside, without making any claim to the lots, till about 1818; and no suit was brought to recover possession thereof till the present plaintiff prosecuted his claim, under her right, in the case between the same parties, reported in 6 *Peters*, 763.

"Waiving, for the present, the consideration of a question raised at the trial, whether Rene Gueircero, or Rene Kirgeaux, was the real and true Rene Kiersereau, the rightful owner of the part of the property in controversy between the parties, or another person, we are clearly of the opinion, that Madame Chancellier, in 1787, had a good title to the forty arpents formerly owned by Kiersereau, and the twenty arpents conveyed in exchange by Gamache to Chancellier, in such right, and by such tenure as was given and prescribed by the laws of Spain, and the province, which will be hereafter considered; and that we cannot now question the validity of those acts of the local governor, whether acting in his political or judicial capacity, for reasons hereafter to be given.

"As to the twenty arpents held by Gamache, there is no written evidence that his right thereto was ever conveyed in whole or part, before 1827, to the plaintiff, or any person under whom he claims; nor is there to be found in the record, any other evidence of any right thereto in Chancellier, unless it may have been by possesssion or mere claim. We find in

the inventory and appraisement of his estate, in 1785, that the sixty arpents were then in wheat, valued at six hundred livres, equal to one hundred and twenty dollars, or two dollars per arpent, with the crop in the ground; and the arpents, valued at fifteen livres, equal to three dollars, or fifteen cents per arpent; also that the whole eighty arpents were allotted to the widow, by the final adjudication in 1787. This is, undoubtedly, evidence of a claim by Chancellier, and its recognition by the local authorities, of its rightful existence, so far as it extends, competent for the court below, and jury, to consider. But, for the present, we shall take these proceedings, and any possession by Chancellier, as not operating per se, to divest the lawful title of Gamache to the twenty arpents, such as it was under the laws of Spain, the acts of the local authorities, and his possession and cultivation pursuant thereto. Whether there is any evidence in the record which can have that effect, will be a matter for future consideration, should it be deemed important.

"Thus taking the plaintiff's title, we proceed to state that of the defendant who claims under and in right of Hyacinth St. Cyr, who, about 1788, took possession of the two lots, and continued to cultivate the front thereof for ten consecutive years, till 1798-99, when the fence having been dstroyed, the lots remained open till 1808. St. Cyr claimed in virtue of a parol sale by Madame Chancellier to him, after the adjudication, by his possession delivered to him by the local officer, charged with the supervision of the common field lots of the village, agreeably to the local laws, its usages and customs, conformably to the laws of Spain, together with his uninterrupted cultivation as aforesaid.

"2. By two deeds, one from Kiersereau, the other from Gamache, both dated 23rd October, 1793, both originals, found among a great number of deeds in the ancient archives of the country, delivered and handed over to the recorder of St. Louis county, after the cession in 1803, and both executed by the parties, in the presence of, and signed by the governor, with the attestation of two witnesses of assistance. Each deed conveys the lot owned by the grantor, with a clause of warranty, reciting St. Cyr as having been in possession several years; that of Kiersereau being for the consideration of five hundred and twenty-five, and that of Gamache, for three hundred livres; equal to one hundred and sixty-five dollars for both.

"3. By the following entries on the Land Book, containing the record of the official survey for Rene Kiersereau, '1793, St. Cyr, 1 Arpent;' and the following on the survey of 'Joseph Gamache, 1793; St. Cyr, 1 Arpent; name of said Gamache is Baptiste, instead of Joseph;' which entries must be taken to denote, that St. Cyr then claimed the lots under the parties for whom the original surveys were made and recorded.

"4. By a judicial proceeding against St. Cyr, as a bankrupt, had before the lieutenant governor, in his judicial capacity, in 1801, by which the two lots were seized, appraised by sworn appraisers at ten dollars, and sold to Auguste Choteau, as the property of St. Cyr, at the Church door, at the conclusion of high mass, for twelve dollars, payable in peltries at the current price, in April, 1802; for which one Sanguinet was security. The whole proceedings in the sale was executed in the presence of the witnesses of assistance; one of whom was the surveyor gen-

eral; the appraisers, St. Cyr, the syndic, and the lieutenant governor, who all signed the proceedings.

"5. By the proceedings of the board of commissioners of the United States, for adjusting land titles in Missouri, in 1809 and 10, by which it appears that Choteau filed his claim to these lots in 1806, according to the acts of Congress, as the assignee of St. Cyr, assignee of Rene Kiersereau, and Joseph Gamache. He produced to the board the concessions for the same, registered in the Livre Terrein, plots of the surveys, copies of the deeds from Kiersereau and Gamache, to St. Cyr, with a certified copy of the proceeding of bankruptcy against him, by which Choteau became the purchaser of the two lots; and that the board, consisting of Mr. Penrose and Bates, confirmed the lots to Choteau, according to the recorded surveys in the Land Book, No. 2, folio 11.

"6. By a deed from Auguste Choteau to the defendant, dated in January, 1808, conveying him the two lots in question, for the consideration of four hundred and fifty dollars.

"7. By the confirmation of the rights, titles and claims to town or village lots, out lots, common field lots and commons, adjoining or belonging to the town of St. Louis, and others, which have been inhabited, cultivated, or possessed, prior to the 20th December, 1803, to the inhabitants thereof, according to their several right or rights in common thereto.

"8. By the actual continued possession of the two lots by the defendant, from 1808 till the trial, as then admitted by the plaintiff."

In the instant case there is no evidence of the slightest recognition having been given the Tarascon grant by any

of the Spanish authorities. On the contrary, the map of New Orleans and its environments made by Trudeau, the Spanish surveyor general, in 1798, shows the property at that time to have been vacant and unappropriated cypress swamp. In the Struther-Lucas case the title held by the plaintiff was as perfect as could be imagined; but because it had never been presented for registry, the court held that it could not be considered as evidence. The court on pages 447, 448, 452, 453, 454, said:

"Congress, well aware of the state of the country and villages, wisely and justly went to the extent, perhaps, of their powers, in providing for the security of private rights, by directing all claimants to file their claims before a board, specially appointed to adjust and settle all conflicting claims to lands. They had in view another important object; to ascertain what belonged to the United States, so that sales could be safely made; the country settled in peace, and dormant titles not be permitted either to disturb ancient possession; to give to their holders the valuable improvements made by purchases, or the sites of cities which had been built up by their enterprise; vide 10 Peters 473. Accordingly, we find, that by various acts, the time of filing such claim is limited; after which they are declared void, so far as they depend on any act of Congress; and shall not be received in evidence in any court, against any person claiming by a grant from the United States. 2 Story, 968, 1061, 1216, 1260, 1301.

"These are laws analagous to acts of limitations, for recording deeds, or giving effect to the awards of commissioners for settling claims to land under the laws of the states; the time and manner of their operation, and the exceptions to them, depend on the sound discretion of the

legislature, according to the nature of the titles, the situation of the country, and the emergency which calls for their enactment. Reasons of sound policy have led to the general adoption of laws of both descriptions, and their validity cannot be questioned. Cases may occur where the provisions of a law may be such as to call for the interposition of the courts; but these under consideration do not. Vide 3 Peters, 289-90. They have been uniformly approved by this court, in 12 Wh. 528-29, 537-39-43, 601-2; 6 Peters, 771-72; 7 Peters 90 to 93, passim; and ought to be considered as settled rules of decision in all cases to which they apply.

"After recapitulating the evidence as it appeared in the then record the court observed: 'From this statement of the case, according to the plaintiff's own showing, there is a regular deduction of title or claim from the persons for whom the lots were surveyed to the defendant. But it appears that these persons, Kiersereau and Gamache, sold their claim twice; (Gamache onehalf) in the first place, to Louis Chancellier, under whom the plaintiff claims; and in the second place to St. Cyr, under whom the defendant claims. If these title papers were to be considered, independent of the acts of Congress, and the proceedings of the commissioners, the plaintiff being prior in point of time, would prevail so far as depended upon the deduction of a paper title, and independent of the question of possession.'

" 'It becomes necessary, therefore, to inquire how far the acts of Congress apply to, and affect any part of these title papers.' The court then, referring to the acts of 1805 and 1807, and to the evidence held, that as there was no evidence that Madame Chancellier had ever filed her claim, or the evidence thereof, pursuant to the law, and the in-

struction of the court complained of, was on the effect of the confirmation under the law; the plaintiff could derive no benefit from it; 6 Peters, 772; which we think was the correct result of the then case. A different case is now presented on this subject.

"The plaintiff gave in evidence two opinions of the recorder of land titles of St. Louis county, confirming the representatives of Gamache and Kiersereau the forty-arpent lot of each, and directed each to be surveyed; but did not offer the confirmations to Choteau by the board of commissioners, which were given in evidence by the defendant. The plaintiff claimed under the former, the defendant under the latter; that of the plaintiff will be first considered.

By the 8th sec. of the act of 1812, 2 Story, 1260, the recorder of land titles was invested with the same powers, and enjoined to perform the same duties, as the board of commissioners, (which was then dissolved) in relation to claims which might be filed before the 1st December, 1812; and the claims which have been heretofore filed, but not acted on by the commissioners; except that all his decisions shall be subject to the revisions of Congress. He was directed to report to the commissioner of the land office, a list of all such claims, with the substance of the evidence in support thereof, his opinion, and such remarks as he may think proper, to be laid before Congress at their next session. By the act of 1813, the time for filing claims was extended to 1st January, 1814. 2 Story, 1306, 1384-5, under which acts the recorder made the confirmations relied on by the plaintiff on the 1st November, 1815, which was confirmed by the 2nd sec. of the act of 1816, 3 Story, 1604. But these confirmations cannot avail the plaintiff as a

claimant under these or any other acts of Congress, for the following reasons: 1. That the authority of the recorder of land titles was, by the express terms of the acts of 1812 and 1813, confined to those claims on which the board of commissioners had not previously acted; from which follows, that after the commissioners have made a confirmation of a specific claim, the action of the recorder is either merely cumulative, and so inoperative; or if adverse, merely void, as an assumption and usurpation of power in a case on which he had not jurisdiction, and his action must be a mere nullity. Here the commissioners had decided on the identical claim in 1809-10; Congress has made a general confirmation of all the claims of the then inhabitants of St. Louis, of their title to the common field lots in 1812, when the defendant was an inhabitant thereof, and in actual possession of those in controversy; and by the act it was provided, that it should not affect any confirmed claims to the same lands. Surveys were directed to be made, plots thereof made out, and transmitted to the general land office and recorder of land titles. 2 Story 1257-8. As the act directed no further steps to be taken, the title became complete, and the recorder henceforth ceased to have any power over the confirmed lots, save to perform the ministerial acts directed by law, as the ordinary duties of his office. If congress could, it never did give him any authority to supervise either the acts of the commissioners, or the confirmations of the law.

"2. We must, then, take the defendant, as one holding the premises in controversy, by a grant from the United States, and as ther grantee, entitled to all protection of the laws appropriate to the case. The unanswerable reasoning of this Court, in *Green vs. Liter*, the principles of law on

which it is founded, with the admitted authority with which it has been received, save the necessity of any reference to any other source for its support. 8 Cr. 244-49. That a grant may be made by a law, as well as a patent pursuant to a law, is undoubted, 6 Cr. 128; and a confirmation by a law, is as fully to all intents and purposes a grant, as if it contained in terms a grant *de novo*. The plaintiff, therefore, is brought within the two provisions of the laws; that by Madame Chancellier not having filed her claim within the time limited by law, she could not set up any claim under any act of Congress, or be permitted to give any evidence thereof in any court, against a person having a grant from the United States, under the confirmation of the commissioners, and the act of 1812." *Struther vs. Lucas* 12 Peters pp. 447, 448, 452, 453, 454.

As the title under which plaintiff in the Struther-Lucas case claimed was a perfect title, emanating from the Spanish governor, accompanied by actual cultivation and occupation for more than ten years, the decision of your Honors could not be construed otherwise than a point blank decision to the effect that under the act of March 2nd, 1805, all titles were required to be placed of record.

In the case bearing the same title, 6th Peters, pages 70-72, your Honors said:

> "No grant has been shown under which the plaintiff sets up his claim; his title was therefore incomplete, and, by the fourth secton of the act of 1805, (3 vol. L. U. S. 653,) the person claiming the land was bound to deliver it to the register of the land office, or recorder of land titles, within the district where the land lies, a notice in writing stating the nature and extent of his claim; and also to de-

liver to the said register or recorder, for the purpose of being recorded, every grant, order of survey, deed, conveyance or other written evidence of his claim. And the law directs that they shall be recorded by the register or recorder, etc., with a proviso, however, that where the lands are claimed by virtue of a complete French or Spanish grant, it shall be necessary for the claimant to have any other evidence of his claim or order of survey and the evidence of his claim recorded, than the original grant or patent, together with the warrant or order of survey and the plat; but all the other conveyances or deeds shall be deposited with the register or recorder, to be laid before the commissioners. And the act then declares that if such person shall neglect to deliver such notice in writing of his claim, or cause to be recorded such written evdence of the same, all his right, so far as the same is derived from the two first sections of the act, shall become void, and forever thereafter barred. If any doubt should arise whether the original right, claimed in this case, comes within the two first sections of the act, that is removed by the act of 1807 (4 vol. L. U. S. 112), which repeals the proviso to the first section of the act of 1805, and the power of the commissioners is enlarged. The fourth section declares that the commissioner shall have full power to decide, according to the laws and the established usages and customs of the French and Spanish governments, upon all claims to land within their respective districts, where the claim is made by any person or persons, or legal representative of any person or persons who were on the 20th December, 1803, inhabitants of Louisiana, and for a tract not exceeding the quantity of land contained in a mile square, etc., which decision of the commissioners, when in favor of the claimant, shall be

final against the United States. And the time is extended for delivering notices and evidences of the claim, but declaring that the rights of such persons as shall neglect so doing, shall, so far as they are derived from or founded on any act of Congress, ever after be barred and become void, and the evidences of their claims never after admitted as evidence in any court of law whatever. There is no evidence that notice of the claim, not set up, was ever given as required by these laws; or that the deeds from Kiersereau and Gamache to Chancellier were ever delivered to be recorded as required by the law. And Madame Chancellier, having slept upon this claim for so great a length of time from the year 1785 to 1818, there is every reason to conclude she had abandoned it; and these deeds cannot now, under the provisions of these laws, be received as evidence of any right to be established under the acts of Congress."

In the Dauterive case, 10 Howard, at page 626 your Honors said:

"The fourth section of the act of Congress, also quoted in the argument for the appellees, if applicable in any sense to their pretensions, certainly adds nothing to their intrinsic force. This section is a simple requisition, that persons claiming lands within the Territory of Louisiana, by virtue of any legal French or Spanish grant made prior to the 1st day of October, 1800, may, and persons claiming lands in the said territories by virtue of any grant or incomplete title bearing date subsequent to the 1st day of October, 1800, shall, before the 1st day of March, 1806, deliver to the register of the land-office or recorder of land-titles within whose district the land may be, a notice in writing, stating the

nature and extent of his claims, together with a plat of the tract or tracks so claimed; and shall, also, on or before that day, deliver to the register or recorder, for the purpose of being recorded, every grant, order or survey, deed of conveyance, or other written evidence of his claim. This section then proceeds to declare, as a penalty for non-compliance with its directions, that all the rights of the claimant derived from the first two sections of the act (embracing all grants founded upon mere territorial occupation by France or Spain), shall become void, and forever after barred; and that no incomplete grant, warrant, or order of survey, deed of conveyance, or other written evidence, which shall not be so recorded, shall be considered or admitted as evidence in any court of the United States, against any grant derived from the United States. But for the act of Congress of the 6th of February, 1835, entitled "An Act for the final adjustment of claims to lands in the State of Louisiana" the fourth section of the act of 1835, would have operated as a complete bar to the claim of the appellees from the 1st day of March, 1806."

In the case of *United States vs. Arredondo*, 6 Peters, p. 725, the Court said:

"In the law of the succeeding session passed for ascertaining and adjusting the titles and claims to land within the territory of Orleans and district of Louisiana, it was directed that evidence of claims to land should be recorded; but there was this proviso in the fourth section: That where lands claimed by virtue of a complete French or Spanish grant as aforesaid, it shall not be necessary for the claimant to nave any other evidence of his claim recorded than the original

grant or patent, together with the warrant or order of survey and the plot."

The Supreme Court of Louisiana has repeatedly construed the act of Congress under discussion.

In the case of *Lobdell vs. Clark* 4th An. page 99, the Court said:

"This is a petitory action founded on a patent issued on the certificate of purchase of two pre-emption rights. The defendant resists the claim, and alleges he is the owner of the land covered by the patent, by virtue of an order of survey granted in 1798, under which he alleges that the land has been occupied and cultivated by Jose Matteo Ugarte, and those who claim under him, down to the present time. There was judgment against him, and he appealed.

"The evidence leaves it extremely doubtful whether the claim of the defendant covers any of the land patented to the plaintiff's vendor. But if it did, it rests upon an incomplete grant, which is not shown to have been presented for confirmation, recorded, as required by the various acts of Congress, passed for ascertaining and adjusting titles and claims to land within the territory of Orleans. Those acts expressly provide that if claimants shall neglect to give notice of their claims in writing to the proper officers, or to cause to be recorded the written evidence of them, all their right, so far as the same is derived from the first two sections of the

act of 1805, shall become void and forever thereafter be barred; nor shall any incomplete grant, warrant, order of survey, deed of conveyance or other written evidence, which shall not be recorded as above directed, ever after be considered and admitted as evidence in any court of the United States, against any grant derived from the United States, *Land Laws*, pp. 520, 548.

"The defendant contends that, by the first section of the act of 1805, amended by the first section of the act of 1807, an order of survey, obtained prior to the first day of October, 1800, where the land was actually inhabited and cultivated, had the effect of a complete title; that it conferred on the grantee absolute ownership; and was not required to be recorded under the fourth section of the act of 1805. If this construction of the acts of Congress was correct, it would not avail the defendant, because he has failed to show that the land claimed was actually inhabited and cultivated by the grantee, or by any person for him; the occasional possessions he has shown, being totally unconnected with the order of survey under which he claims. But we are satisfied that the exception contended for, only exists in favor of complete French and Spanish grants.

"It is further alleged that, the right of the defendant to the land, is secured by the treaty of cession, and could not have been taken away by an act of Congress. This argument takes for granted that the title passed from the sovereign under an order of survey, even when there was no actual settlement, and cultivation.

"But it has been settled by the highest judicial authority that such was not the effect of inchoate grants; that until the patent issued, they remained within the discretion of the grantor; and that they were not changed in their character by the treaty

by which Louisiana was acquired; that this treaty imposed upon the government of the United States only a political obligation to perfect them; and that this obligation, sacred as it may be, cannot be enforced by any action of the judical tribunal. *Chouteau vs. Eckhart*, E. Howard, 344. *United States vs. Wiggins*, 14 Peters, 330. *Pontalba vs. Copland*, 3 an. 86.

"It is urged on the authority of *Murdock vs. Gurley*, 5 Rob. 457, that the penalty imposed by acts of Congress is a mere rule of evidence binding only upon the courts of the United States. We cannot view it in that light, considering, as we do, orders of survey, unattended with actual settlement and cultivation, as mere acquitable claims under which no title passed.

"It is undoubtedly a rule of property. Since the treaty of cession, the United States have acted uniformly upon that class of claims by legislation, and their rights to prescribe the mode and the time, by and during which, they might be ripened into perfect titles, cannot now be doubted.

"After extending again and again the time allowed to make inchoate grants, and complying fully with the political obligation imposed upon them by the treaty of cession, the land in controversy has remained vacant, and they have granted it to the plaintiff's vendor, with the solemn pledge that he should not be disturbed by any inchoate grant not previously made known to the proper authority. We must hold this grant to be the paramount and better title.

"The chain of titles to the plaintiff ascends to the patent, which issued directly in Millaudon's name, as purchaser of the settlement rights of Jones & Bunker. This appears to us sufficient in a case where Jones & Bunker are not parties.

Again in the case of *Board of Directors vs. New Orleans Land Company*, 138 An. page 50 the Court said:

> "The concluding portion of Section 4, which refers to all and any grants, provides:
>
> " 'And if such person shall neglect to deliver such notice in writing of his claim, together with a plat as aforesaid, or cause to be recorded some written evidence of the same, all his right, so far as the act shall become void, and forever thereafter be same is derived from the two first sections of this barred; nor shall any incomplete grant, warrant, order of survey, deed of conveyance, or other written evidence, which shall not be recorded as above directed, ever after be considered or admitted as evidence in any Court of the United States, against any grant derived from the United States."

And in the 145 La., pp. 479-482, the Supreme Court of Louisiana dealing with a title claimed to have been granted by the French while they were **lawfully** in possession of Louisiana, said:

> "The Livaudais confirmation was in 1858, while that of Macarty was in 1823, The judge of the district court held in this case that as the grant of Macarty preceded in date the grant by Congress to Livaudais the former took precedence and excluded the latter grant, and gave judgment for defendant. Plyaintiff has appealed.
>
> "Plaintiffs in this court contend that they do not rely exclusively upon the confirmation of grant in the year 1858, but that they trace their grant to the French government, which was made in the year 1760.

"John McDonough made this same claim against the United States government on June 15, 1846, in the district court of the Eastern District of Louisiana. In his petition he claimed a complete and perfect title and he asked that the title be declared good and valid, and that patent be ordered to be issued to him. The Supreme Court of the United States, in passing upon the case, in 15 How. 36, 14 L. Ed. 590, said in part: 'Now the title set up by the petitioner is a complete legal title; and, if he can establish the facts stated in his petition, his title is protected by the treaty itself, and does not need the aid of an act of Congress to perfect or complete it. For undoubtedly, if the possession of the land has been held continually by the petitioner and those under whom he claims under the judicial sale made by the French that a valid and perfect grant had been made by the authorities in 1760, the legal presumption would be proper authority, although no record of it can now be found.

" 'We, of course, express no opinion as to the sufficience of the evidence to maintain the complete and perfect the title claimed in the petition. That question is not before us on this appeal, for, as the district court had no authority to decide upon it, the decree must be reversed for want of jurisdiction, and the petition dismissed.'

"And the suit was dismissed for want of jurisdiction in the district court, as the district was vested with jurisdiction only over inchoate titles emanating from the several governments which had control of the territory of Louisiana, and not the complete legal title alleged by complainant.

"In their petition plaintiffs allege upon the confirmation of title by act of Congress adopted June 7, 1858, although they have offered evidence going to show that their title originated in a sale

made in the Succession of Broutin to Pontalba in 1760; and they argue that the sale made in the Succ. of Broutin at that time was equivalent to a patent or grant from the French government, and at that time that there was a pressumed legal title; and they also refer to a report made by the register and receiver of the land office for the Eastern District of Louisiana, of date November 11, 1837, in which it is said: 'This document (the recitals in the petition of McDonough) is the most perfect title that could be issued; it is fully equivalent to a patent (and it is indeed, in itself, a patent) as the Supreme Council of the province was at the head of the land office, granted the land, issued patents.'

"But Congress did not confirm McDonough's title on the report of the register and receiver. The confirmation was made in 1858.

"(2) And an order or decree of the Supreme Council of the Province of Louisiana, in the Succ. of Broutin, was not an act of the government of France. The Council had no authority to grant patents to public lands while sitting as a judicial tribunal. The Supreme Council, in the Succ. of Broutin, was not attempting to sell or grant public lands; it was there disposing of private property belonging to the Succ. of Broutin And, indeed, McDonough had petitioned Congress to confirm his inchoate title, in 1858, just as Livaudais had done in 1821 with reference to that portion of the tract 80 arpents back from the river.

"In passing upon this very question, the Supreme Court of the United States said in the case of *U. S. vs. Ducros*, 15 How. 38, 14 L. Ed. 591, where the appellees claimed to be the owners of certain lands which had been adjudicated in a judicial proceeding before Baron de Carondelet to the widow of Toutant Beauregard which was during

the time of the French domination in Louisiana:

" 'The proceedings before Carondelet in 1793, in the settlement of the estate of Louis Toutant Beauregard, could not be construed as a confirmation of the French grant, from the mere circumstance that in the inventory, decedent's estate is described as running back to the lake. Carondelet could not be said to confirm in his political capacity, a title which is not even stated in the mere formal proceedings before him in his judicial capacity.'

"(3). And so when Pontalba bought the property in question Feb. 9, 1760, in the Succ. of Mr. and Mrs. Broutin, which sale was made by Charles Marie Delalande Dapremont, councilor judge of said court, commissioner nominated to that effect, Jean Baptist Raguet, councilor of said council acting as the king's attorney-general, Pontalba did not acquire a patent from the crown of France. He simply acquired whatever title the Broutins had, and which was sold in their succession. Such an act of sale of lands belonging to private individuals, in probate proceedings, cannot possibly be construed into an action by the government. Such title cannot be said to have emanated from the government; and, if it could have borne such construction, it would have been an inchoate title, and not a patent. Title did not pass under an inchoate grant. The title remained in the sovereign until a complete title was granted.

"(4) In such case that of an inchoate title, the claimant was given six months time in which to record his claim with the United States commissioner. Act Cong. April 25, 1812, c. 67, 2 Stat. 713. This time was several times extended by subsequent acts. This notice by plaintiff's authors was not filed with the commissioner, within the time therein limited, or within the various extensions of time

made subsequent to the adoption of the act. It was never filed.

"These acts expressly provide that if claimants shall neglect to give notice of their claims in writing to the proper officers, or to cause to be recorded the written evidence of them, all their right, so far as the claim is derived from the government, shall become void, and forever thereafter be barred as evidence on the trial of title to said lands in any court of the U. S. against any grant which thereafter may have been derived from the U. S. Section 4.

"The alleged grant, relied upon by plaintiffs, of date 1760, cannot therefore be received by the court in evidence in support of plaintiff's title, *Lobdell vs. Clark*, 4 La., Ann. 66) against defendant's confirmation of title by Congress in 1823.

"(5). As petitioners claim under title confirmed by act of Congress in June 7, 1858, which was subsequent in date to that of the confirmation by Congress of defendant's title in 1823, the defendant became the owner of the property under the first confirmation by Congress, which was in 1823. *Pontalba vs. Copland*, 3 La. Ann. 86; *Duplessis vs. Miller*, 6 La. Ann. 638; *Choteau vs. Eckhart*, 2 How. 344, 11 L. Ed. 293.

To the same effect are the cases of

Hall vs. Root, 19 Alabama, 379,
Estrada vs. Murphy, 19 Cal., 269,
Minturn vs. Brower, 24 Cal., 644,
Guyol vs. Choteau, 9 Mo., 548.

The record shows that the ownership of the alleged Tarascon grant was vested in Alexander Milne at about the time the act of Congress of March 2nd, 1805, was

adopted. Mr. Milne was a man of large affairs, and had a number of different varieties of titles comprising thousands of acres of land situated on Bayou St. John and Lake Pontchartrain, in the immediate vicinity of Bayou St. John.

The American State Papers, Public Lands, Vol. 2, pages 258, 262 and 270 and Vol. 5, page 671, of which your Honors will take cognizance, show that practically from the time of the passage of the act of March 2, 1805, until 1832, Mr. Milne was engaged in securing confirmations from the various boards of commissioners of his titles to his lands, among which were several based on grants made by Aubry about 1766. Mr. Milne was, therefore, aware of the necessity of having such titles confirmed. Why did he not present for confirmation the alleged Tarascon grant? The only reasonable answer is that he must have known that there was not the requisite possession on the 20th of December, 1803, which was a condition upon which his right to have the title confirmed depended. Certainly there was no possession in 1798 when the Spanish Surveyor General Trudeau made his official map of the City of New Orleans and its environs.

Whatever reasons may have actuated the owner of this alleged grant, there can be no doubt of the effect of his failure to have evidence of his claim presented to the board of commissioners and properly recorded.

FIFTH ASSIGNMENT OF ERRORS.

In all of the authorities, most of which are reviewed in the case of *Struther vs. Lucas*, 12 Peters, 430, it was held that by the treaty of Paris, the United States was placed in

the shoes of the former governments and assumed towards the inhabitants only the obligations of such governments. No additional rights were acquired by the inhabitants by virtue of the treaty of Paris. Whether a title required confirmation or not, depended on whether it was a complete legal title by which the ownership of the government had been entirely divested.

In the case of *Menards Heirs vs. Massie*, 8 Howard p. 293, the question as to what is and what is not a complete grant is discussed at great length. The Court said on page 303:

> "The argument is, that the concession was made by an officer who had power to grant; and having done so, the land granted was 'property,' and protected by the third article of the treaty of 1803, which declares that the inhabitants of the ceded territory shall be maintained and protected in the free enjoyment of their liberty and property; that the laws of nations equally with the stipulations of the treaty, secured the title of such grantees.
>
> "That the Lieutenant-Governor of Upper Louisiana had the authority, as a sub-delegate, under the Intendant-General of the provinces of Upper and Lower Louisiana and Florida, to make concessions, is undeniable; he could and did deal with the public domain of the province—made concessions, directed the lands to be surveyed and caused guarantees to be put into possession. This, however, does not settle the question. It does not depend upon the existence of power, or want of power, in the Lieutenant-Governor, but on the force and effect of the right his concession conferred. Did it give such a vested title in the soil, as the Spanish government could not legally disavow it? Or could the Intendant-

> General, representing the royal authority, lawfully refuse to confirm the concession, and order the grantee to be turned out of possession? If it be true, that the title ended with the concession, survey, and occupancy of the landgranted then it follows, that the title was completed and perfected under the Spanish laws, by these acts; nor was a confirmation from any higher power than the Lieutenant-Governor at all necessary; the grantee having all the title that the King could give."

The Court then proceeds, in a most elaborate opinion, to decide that no title from the Spanish authorities was a complete title and binding on the United States under the third section of the treaty until after the issuance of the formal title or patent.

Besides the question of necessity for confirmation of the grant by Aubry, in 1766, is fully settled by the act of March 2nd, 1805.

Wherefore, it is respectfully submitted that the judgment of the Supreme Court of Louisiana maintaining title of the defendant in error to that portion of Section 15, Township 12 S, R. 11 E, South Western District of Louisiana, East of the Mississippi River, is erroneous, and should be annulled, avoided and reversed, in so far at it amends the judgment of the Civil District Court of the Parish of Orleans, and judgment rendered in favor of plaintiffs in error, recognizing them as the owners of the whole of said Section 15.

WM. WINANS WALL,
CHARLES SCHNEIDAU,
Attorneys.

NEW ORLEANS LAND COMPANY *v.* BROTT ET AL.

BROTT ET AL. *v.* NEW ORLEANS LAND COMPANY.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Nos. 64 and 86. Argued October 10, 11, 1923.—Decided November 12, 1923.

1. The act of state officials in issuing a patent, under a state statute empowering them generally to convey such land as passed to the State under a federal swamp land act, is not the exercise of an "authority" under the State, within the meaning of that term in the statute governing writs of error from this Court (September 6, 1916, § 2, 39 Stat. 726,) if the specific lands in the patent, by reason of a prior Spanish grant and a treaty and laws of the United States, were not included in the swamp land grant. P. 98.
2. The claim that a decision of a state court erred in sustaining a Spanish grant over the objections that it was not valid originally and was not confirmed as required by act of Congress,—*held*, not ground for a writ of error under the Act of September 6, 1916, *supra*. P. 99.

Writs of error to review 151 La. 134, dismissed.

CROSS writs of error to a judgment of the Supreme Court of Louisiana in a petitory action for land.

Mr. Charles Louque for New Orleans Land Company.

Mr. William Winans Wall, with whom *Mr. Charles Schneidau* was on the brief, for Brott et al.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a petitory action for land in New Orleans brought by the Brotts against the New Orleans Land Company. Judgment was given for the Brotts except as to one parcel which was adjudged to belong to the defendant. The defendant brings a writ of error and the Brotts a cross writ. The ground of the judgment was that the State acquired title to the land under the Swamp Land Act of March 2, 1849, c. 87; 9 Stat. 352, and conveyed it to the plaintiffs' predecessors, except that the parcel awarded to the defendant was held to have been excluded from the Swamp Land grant to the State because before the territory was transferred by France to the United States it had been conveyed to private persons by a complete grant.

The New Orleans Land Company contends that at the time of the Swamp Land Act all the land in controversy was in private hands and therefore did not pass to the State; the statute providing that the Secretary of the Treasury shall approve the list of swamp lands directed to be made out "so far as they are not claimed or held by individuals," and the list having been approved "subject to any valid legal rights." It asks this Court to take jurisdiction on the ground that there is drawn in question the validity of an authority exercised under a state law, that is, the issue of the patent, on the ground that it was repugnant to the Treaty of 1803 with France, 8 Stat. 202, and the laws of the United States, and that the decision upheld the validity of the state patent. It also sets up a prior purchase under a decree of the Circuit Court of the United States, but that contention is disposed of by *New Orleans Land Co.* v. *Leader Realty Co.*, 255 U. S. 266. The Brotts rely upon alleged errors as to the grants before the treaty and in recognizing a title under them, even if it existed, when the alleged owner had not had it confirmed as required by the Act of March 2, 1805, c. 26, § 4; 2 Stat. 324, 326, and later acts.

The defendant, the Land Company, to make out its case would have to maintain that notwithstanding the unquestionable validity of the Acts of 1805 and later, requiring outstanding titles to be established or registered after Louisiana was acquired by the United States, *Botiller* v. *Dominguez,* 130 U. S. 238, and notwithstanding the failure of its predecessor in title to comply with the requirement, the land did not pass to the State under the Swamp Land grant if at that time there was any outstanding claim even though the claim turned out to be void. Whatever may be thought of the proposition we cannot deal with it now. No statute of Louisiana has been called to our attention that purports to identify and authorize a conveyance of these particular lands. See La. Stats., March 14, 1855, No. 247; March 16, 1870, No. 38; May 31, 1871, No. 104; Rev. Stats. 1870, § 2920. The validity of no statute has been called in question. The conveyances under which the Brotts claim were authorized by state law only if the lands concerned were part of the Swamp Land grant to Louisiana. The general authority to convey such lands is not attacked, but only the specific patent. If by any chance or hiatus the present lands were not embraced the officials who undertook to convey them were not exercising an authority under the State within the rather narrow meaning that necessarily has been given to the phrase in the statute authorizing writs of error. *United States* v. *Lynch,* 137 U. S. 280. *Cook County* v. *Calumet & Chicago Canal & Dock Co.,* 138 U. S. 635. *French* v. *Taylor,* 199 U. S. 274, 277. See *Champion Lumber Co.* v. *Fisher,* 227 U. S. 445, 451. *Dana* v. *Dana,* 250 U. S. 220. Act of September 6, 1916, c. 448, § 2; 39 Stat. 726. It follows that the New Orleans Land Company's writ of error must be dismissed.

The cross writ taken out by the Brotts also must be dismissed. There very well may have been ground for a writ of certiorari but there is no suggestion that would

warrant a writ of error under the amendment of § 237 of the Judicial Code by the Act of September 6, 1916, c. 448, just cited. The Supreme Court of the State may have unduly limited the Act of Congress of March 2, 1805, but did not dispute its binding effect.

Writs of error dismissed.

HEVER, DOING BUSINESS AS T. A. HEVER